

**The Role of Regional Parliaments in the Process of  
Subsidiarity Analysis within the Early Warning  
System of the Lisbon Treaty**

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It does not represent the official views of the Committee of the  
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## List of abbreviations

### General

**CALRE:** Conference of the European Regional Legislative Assemblies  
**CJEU:** Court of Justice of the European Union  
**COSAC:** Conference of Community and European Affairs Committees of Parliaments of the European Union  
**CoR:** Committee of the Regions  
**EC:** European Commission  
**EP:** European Parliament  
**EU:** European Union  
**EWS:** Early Warning System  
**IPEX:** Inter-parliamentary EU Information Exchange  
**MEPs:** Members of the European Parliament  
**MPs:** Members of Parliament  
**NGOs:** Non-governmental organisations  
**REGLEG:** Conference of European regions with legislative power  
**SMN:** Subsidiarity Monitoring Network

### Austria

**NR:** Nationalrat – federal chamber of national parliament  
**BR:** Bundesrat – regional chamber of national parliament  
**BVG:** Bundesverfassungsgesetz – federal constitution  
**L-BN:** Lissabon Begleitnovelle – Lisbon amendment to the BVG

### Belgium

**BP:** Brussels Regional Parliament  
**COCOF:** Commission communautaire française (French Community Commission)  
**COCOM:** Commission communautaire commune (Common Community Commission)  
**COCON:** Commission communautaire flamande (Flemish Community Commission) (in French)

**FCP:** French-speaking Community Parliament

**FP:** Flemish Parliament

**GCP:** Parliament of the German-speaking Community in Belgium

**VGC:** Vlaamse Gemeenschapscommissie (Flemish Community Commission)  
(in Dutch)

**WP:** Walloon Parliament

## Germany

**BT:** Bundestag (Federal Parliament)

**BR:** Bundesrat (Regional Assembly with legislative competences at federal level)

**GG:** Grundgesetz (Basic Law, i.e. German federal constitution)

**IntVG:** Integrationsverantwortungsgesetz (Act on Assuming Responsibility for EU Integration)

**EUZBBG:** Gesetz über die Zusammenarbeit von Bundesregierung und Deutschem Bundestag in Angelegenheiten der Europäischen Union, EU-Zusammenarbeitsgesetz (Act on Cooperation between the Federal Government and the BT in Matters concerning the EU)

**EUZBLG:** Gesetz über die Zusammenarbeit von Bund und Ländern in Angelegenheiten der Europäischen Union: (Act laying down terms of interinstitutional cooperation in EU matters between the Federal Government and the regions)

## Italy

**CIACE:** Comitato interministeriale per gli Affari Comunitari Europei (Interministerial Committee for EU Affairs)

## Portugal

**EAC:** European Affairs Committee

**COFACC:** Conference of Foreign Affairs Committee Chairs

**JPM:** Joint Parliamentary Meeting

**JCM:** Joint Committee Meetings

Spain

**COPREPA:** Conferencia de Presidentes de Parlamentos autonómicos españoles  
(Conference of Presidents of the regional parliaments)

United Kingdom

**HoC:** House of Commons

**HoL:** House of Lords

# 1. Introduction

## *1.1. Aim of the study*

In 2006, the Barroso Commission announced that it would, even without Treaty obligations, transmit all new EU proposals and consultation papers directly to the national parliaments inviting them to react so as to improve policy formulation.<sup>1</sup> This practice is now formalised in the Lisbon Treaty, in force since 1 December 2009, as far as the subsidiarity principle is concerned. Indeed, the Lisbon Treaty formally introduced the Early Warning System (EWS) which gives the right to all national parliaments to get involved in the EU legislative process, by allowing them to object to a Commission legislative proposal within an eight-week period if they consider it infringes the subsidiarity principle. The Treaty specifies in its Protocol No 2 on the application of the principles of subsidiarity and proportionality (hereinafter referred to as "Protocol No 2"):

“Any national parliament or any chamber of a national parliament may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity.

It will be for each national parliament or each chamber of a national parliament to consult, where appropriate, regional parliaments with legislative powers”.

The following two procedures can result from the EWS:

"Yellow card": If **one third** (one quarter in the area of freedom, security and justice) of the national parliaments oppose its subsidiarity arguments, the Commission, a group of Member States or another legislative initiator, may decide to maintain, amend or withdraw the draft. Reasons must be given for each decision.

"Orange card" applying only to EU draft legislative acts under the ordinary legislative procedure, formerly the co-decision procedure. If more than **50 per**

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<sup>1</sup> COM (2006) 211 Communication from the Commission to the European Council. A citizen's agenda. Delivering results for Europe.

**cent** of the national parliaments oppose such an act on grounds of subsidiarity, the latter must be reviewed. The European Commission may then decide to maintain, amend or withdraw the proposal. If the European Commission decides to maintain its proposal, it has to provide a reasoned opinion justifying why the Commission considers the proposal to be in compliance with the subsidiarity principle. On the basis of this reasoned opinion and that of the national parliaments, the European legislator (by a majority of 55 per cent of the members of the Council or a majority of the votes cast in the European Parliament) shall decide whether or not to block the Commission's proposal.

The EWS had already been tested in the past through the COSAC pilot projects<sup>2</sup>.

The German Bundestag and the German regions (Länder) have traditionally been among the most prominent advocates of strengthening subsidiarity scrutiny in EU decision-making. The German regions have continuously channelled their claims to the federal government and to the EU stakeholders through the conference of Minister-Presidents (Ministerpräsidentenkonferenz) – an informal, federal-level coordination body for heads of all German regional governments. The provisions on subsidiarity scrutiny and the role of national parliaments in the EU introduced by the Lisbon Treaty stem to a great extent from the contributions of the German members of the 2002-2003 Convention on the Future of Europe, tabled in particular by Working Group I on subsidiarity and Working Group IV on the role of the national parliaments.

Within this context, the Committee of the Regions (CoR)<sup>3</sup> recommended that the subsidiarity monitoring process should be accompanied by an internal reform process within Member States, in line with existing constitutional structures, to consolidate the involvement of regional parliaments with legislative powers in the mechanisms envisaged by Protocol No 2 on the application of the principles of subsidiarity and proportionality. In its opinion on “The role of regional parliaments with legislative powers in the democratic life of the Union”<sup>4</sup> the CoR argued that, in Member States where legislative power is shared between

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<sup>2</sup> <http://www.cosac.eu/fr/info/earlywarning>.

<sup>3</sup> The Committee of the Regions is the political assembly that provides the regional and local levels with a voice in EU policy development and EU legislation.

<sup>4</sup> CdR 221/2004 fin.



the national and regional levels, a binding internal agreement should be concluded on the procedure envisaged regarding the enforcement of the EWS, ensuring especially clarity and transparency of this procedure. In addition, the CoR proposed to draw up a list of these procedural agreements adopted in the Member States.

In 2007 the CoR set up the Subsidiarity Monitoring Network (SMN)<sup>5</sup> aimed at facilitating the exchange of information between local and regional authorities and the EU institutions on EU initiatives and legislative proposals having a direct impact on regional and local authorities, and it would like to have its role reinforced and enhanced.

The aim of this report is to provide background information for the regional parliaments and the SMN partners in general on the enforcement of the EWS in each Member State with regions with legislative powers, and more specifically, to answer the following research questions:

What can be the role of regional parliaments within the context of the new EWS put in place by the Lisbon Treaty?

What are the challenges for regional parliaments and for the SMN within the context of the EWS?

Will the Lisbon Treaty change the role of regional parliaments with legislative powers in the EU?

How could the SMN optimise its functionality for its members which are concerned by this mechanism?

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<sup>5</sup> “The network operates on several levels: enabling the political participation of local and regional authorities in monitoring implementation of the subsidiarity and proportionality principles, raising awareness of the practical application of the subsidiarity and proportionality principles, keeping CoR rapporteurs and members abreast of input related to subsidiarity and proportionality emanating from a representative network of local and regional players, identifying measures for better lawmaking, cutting red tape and increasing the acceptance of EU policies by EU citizens.”

<http://www.cor.europa.eu/pages/EventTemplate.aspx?view=folder&id=66e2c45b-37a2-4598-a645-11d7fc19f462&sm=66e2c45b-37a2-4598-a645-11d7fc19f462>.

The first three research questions will be answered in part 3, after having made in part 2 a country by country analysis. The last research question will be covered in part 4 of this report.

The countries to be analysed are the following:

Federal States: Austria, Belgium and Germany.

Regionalised States: Italy and Spain.

Asymmetrical regionalised States: Finland (Åland Islands), Portugal (Madeira and Azores) and the United Kingdom (Scotland, Wales and Northern Ireland).

## ***1.2. Methodology***

The basic research methodology is qualitative. Information has therefore been gathered as follows:

Desk Research: Identifying and collecting relevant material on the implementation of the EWS within the eight Member States analysed, and more specifically, on the involvement of the regional parliaments with legislative powers within the EWS. Given the fact that the Lisbon Treaty entered into force recently, the academic and institutional literature on the involvement of regional parliaments in the EWS is very limited, attention was paid to the existing studies/theories on this issue having a broader perspective on national parliaments.

Questionnaire: A questionnaire was drawn up with the agreement of the CoR's Networks and Subsidiarity Unit and was sent to all relevant actors involved in the process: officials and members of committees responsible for the EWS in national and regional parliaments, national parliament representatives in Brussels, members of CALRE and REGLEG as well as academics or think tank members specialised in subsidiarity issues. The list of regions that replied to our questionnaire, and the percentage of answers per MS are appended in Annex I.

Interviews: On the basis of the answers received to the questionnaires, and during the drafting process of the preliminary findings of the study, more in-depth interviews were carried out with some targeted relevant actors.



## **2. Analysis of procedures established in Member States with regional parliaments regarding subsidiarity scrutiny within the Early Warning System**

### ***2. 1. Federal States***

#### **2.1.1. Austria**

##### **General background**

Austria has a two-chamber federal parliament consisting of the federal chamber (Nationalrat, NR) and the regional chamber (Bundesrat, BR). Their rights and institutional obligations resulting from Austria's membership in the EU are embedded in the federal constitution (Bundesverfassungsgesetz, BVG). The 183 members of the NR are elected by universal suffrage for a period of five years. The 63 members of the BR are elected by the regional parliaments (Landtage) for the duration of the respective regional parliament's mandate, which is mostly five years (six in Upper Austria). Each region is represented in the BR by a minimum of three and a maximum of twelve members, depending on the size of the population of the respective region. In both chambers members sit in political groups and enjoy free mandates.

There are existing procedures and good practices of exchange of information regarding general political scrutiny in EU matters between the federal government on the one side and the NR and BR on the other. They are based on the provisions of the BVG. The rights and obligations of the Parliament resulting from the new instruments to conduct a subsidiarity check have been enshrined in the BVG through an amendment act: Lissabon-Begleitnovelle (L-BN), adopted by the Parliament on 8 July 2010. L-BN established the duty of cooperation between the federal government and the Parliament in terms of exchange of information and expertise (new Art. 23 e (1) and new Art. 23 g (2))

BVG), acknowledged the rights of both chambers to conduct subsidiarity scrutiny resulting from the Treaties and the Protocol (*idem*, new Art. 23 f (1) and Art. 23 h), and the duty of cooperation between the BR and the regions (*idem*, Art. 23 g (3)).

### **Procedures followed at the national/regional levels**

Adoption of the L-BN in July 2010 was the biggest adjustment undertaken by the Parliament in order to give the procedure of subsidiarity scrutiny a legal framework.

The Austrian Parliament enjoys an extensive right of information vis-à-vis the federal government, whereby for every EU legislative proposal the responsible ministry is obliged to provide the NR and the BR with all relevant information, including a subsidiarity analysis (Art. 23 e (1) BVG). Additionally, for every calendar year, a responsible ministry makes available to the Parliament the list of planned legislative initiatives of the European Commission in accordance with the European Commission's annual work programme. Currently, an EU Information Act, laying out detailed provisions for cooperation between the Parliament and the federal ministries is under discussion; it is due for adoption in 2011.

Steps undertaken to implement the new subsidiarity monitoring mechanism at the federal level can be summarised as follows:

Embedding the procedure in the BVG through the L-BN;

Establishing extended information rights for the Parliament with special duties for federal ministries;

Delegating the subsidiarity scrutiny procedure to a specialised EU committee/subcommittee;

Preparing more detailed regulation of information and cooperation mechanisms between the executive branch and the Parliament, adoption envisaged for 2011.

## **Subsidiarity scrutiny procedures**

Except for delegating the procedure to EU (sub)committees without the need to involve the plenary, no specific mechanism has yet been established for conducting the subsidiarity scrutiny. Regular modalities of decision making apply and both chambers rely on their existing rules of procedure. The rationale for delegating subsidiarity scrutiny to a (sub)committee was the need for efficiency and tight deadlines.

The subsidiarity scrutiny procedures in the Austrian Parliament can be summarised as follows:

### **Nationalrat (federal chamber)**

All EU legislative proposals are forwarded to the chancery of the Parliament (Parlamentsdirektion) automatically by the European Commission. In addition, a responsible federal ministry also forwards the proposals, together with any relevant information and respective subsidiarity analyses, to the chancery. The chancery of the Parliament serves both NR and BR through two separate departments – the NR department and the BR department.

The subsidiarity scrutiny on behalf of the NR is formally a prerogative of its general committee (Hauptausschuss). For reasons of efficiency the general committee has established a specialised EU subcommittee, to which it has permanently delegated conducting of subsidiarity scrutiny on behalf of the NR. Decisions of the EU subcommittee are final and are communicated directly to relevant institutional interlocutors. The main committee has the right to revoke the delegation at any time and conduct the procedure itself. In such cases, the main committee has to deliver a report to the plenary, while the plenary has to adopt a formal motion to issue a reasoned opinion, or, after legislation has been adopted at EU level, to start proceedings before the Court of Justice of the European Union (CJEU) for subsidiarity infringement. So far the EU subcommittee has dealt with all cases of subsidiarity scrutiny. The formal procedure for exchange of information between the EU subcommittee, the plenary and the ministerial level is laid down in the Rules of Procedure. Regular modes of decision making apply (simple majority).

Decisions adopted in the course of subsidiarity scrutiny are published through IPEX and communicated to the European Commission, to the European Parliament and to the Council. In addition, the Liaison Office of the Parliament in Brussels communicates decisions of the Parliament to other EU Parliaments' representations, mostly through informal letters.

## **Bundesrat**

All EU legislative proposals are forwarded automatically to the chancery of the Parliament by the European Commission. In addition, a responsible ministry provides complete information about the proposal, together with any other relevant information and a subsidiarity analysis. The department of chancery responsible for the BR forwards the proposals to the members of the BR and also automatically to all regional parliaments (Art. 23 g (3) BVG) through the national contact point of the regions (Verbindungsstelle der Bundesländer).

Similarly to the NR, the BR has established a specialised EU committee with the mandate to conduct subsidiarity scrutiny on behalf of the BR. The EU committee of the BR takes a decision by a simple majority of votes, relying on the regular provisions of BR's rules of procedure. Any member of the BR may assist in the work of the EU committee without the right to vote. If half of the representatives of at least three regions demand, the EU Committee must delegate the procedure to the plenary. In such cases the EU Committee is obliged to present a report on the matter.

In both chambers decisions on taking direct action before the CJEU for subsidiarity infringement can only be taken by the plenary and may not be delegated to the committees or subcommittees.

Decisions of the BR in EU matters are communicated to the European Commission, as well as to all members of the BR, the President of the NR, all regional parliaments, regional presidents and Austrian members of the European Parliament.



Decisions of the chambers are communicated automatically to the relevant institutions by the chancery through formal channels, and additionally to other parliaments by the Liaison Office in Brussels through informal channels.

### **Cooperation between chambers**

The two chambers work independently, although they enjoy a good practice of mutual information sharing. Informal contacts between the chambers take place at the level of political groups. Mutual exchange of information about official decisions involves the administrative channels. Both chambers receive the same set of documents concerning a legislative proposal from the relevant ministry, including subsidiarity assessments. NR and BR have no obligation to consult each other or take their respective positions into consideration. However, by provisions of the BVG and the rules of procedure of both chambers, they are obliged to exchange information when a reasoned opinion is issued or when application to the CJEU is intended.

The chambers extend the right of information about their decisions in EU matters to Austrian members of the European Parliament. The regional parliaments are systematically informed by the chancery of the BR.

### **Regional parliaments (Landtage)**

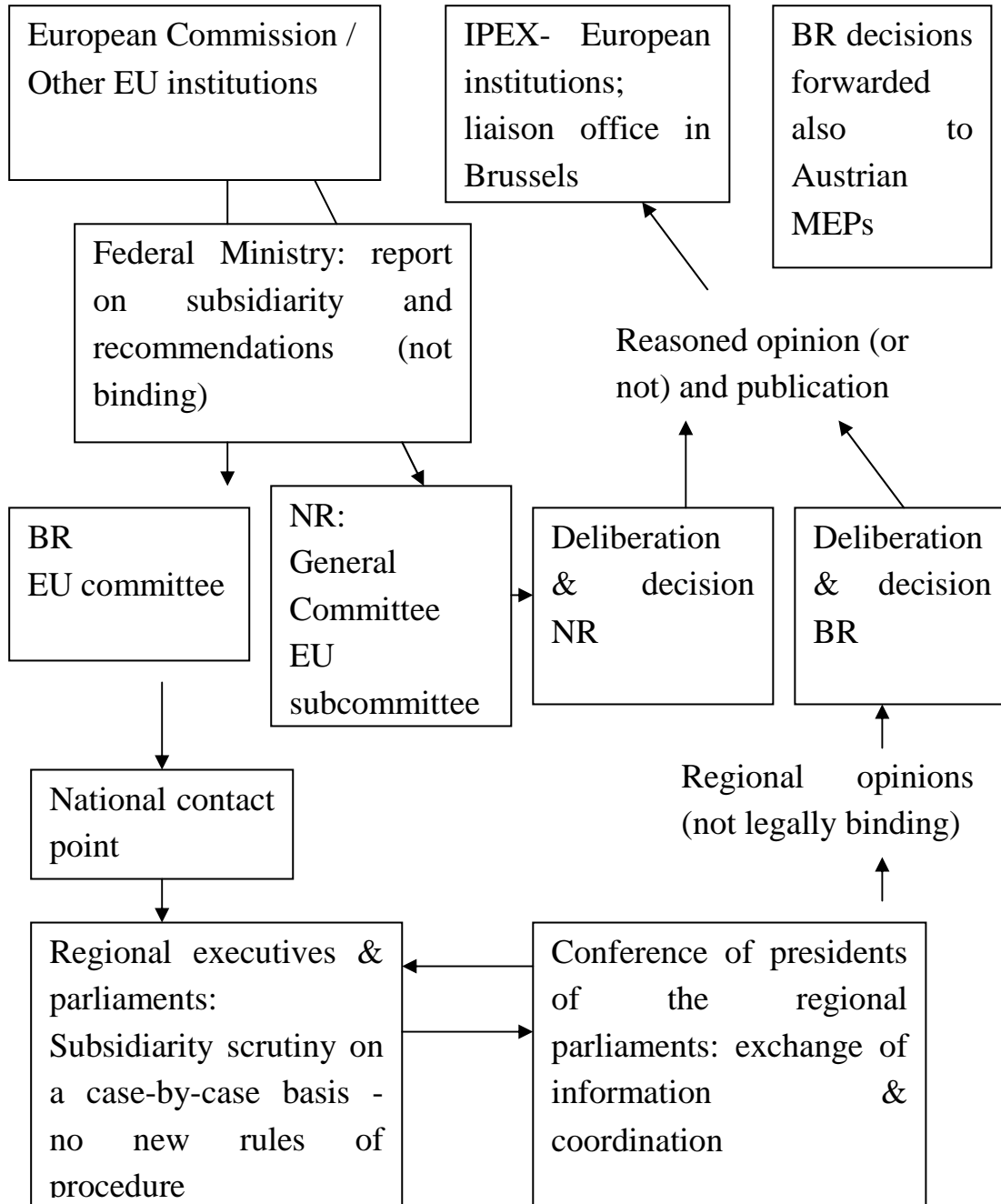
Overall, subsidiarity scrutiny is conducted tentatively and on a case-by-case basis by the regional parliaments. The reasons for this situation are the novelty of the EWS as such, the high general workload of the regional parliaments and limited experience with subsidiarity.

Cooperation with regional executive branches does exist, although the executives have no formal role for subsidiarity scrutiny. Their involvement consists of exchanging information and expertise. The national contact point forwards documentation concerning subsidiarity scrutiny received from federal level institutions to the regional governments and they then forward it to their parliaments. The governments support their parliaments by providing expertise and cooperating in the preparation of subsidiarity analyses. Currently, none of the regions has implemented special coordination procedures between regional

governments and regional parliaments. Due to the relative novelty of the system, most regions are postponing the establishment of new procedures and relying on the existing ones until experience proves what concrete challenges need to be addressed.

Experiences with conducting subsidiarity scrutiny have been irregular throughout the regions. To date only some regional parliaments have run their own subsidiarity tests, while others have relied on the inputs and analyses provided by others. Not all regional parliaments have a specialised EU committee (e.g. not that of Vienna). The Tyrol and Vorarlberg parliaments have delegated the subsidiarity scrutiny procedure to their respective EU committees.

Subsidiarity scrutiny procedures involving the BR and regional step by step in Austria:



## Filtering procedures

At the federal level, no filtering procedure exists until the EU legislative proposal reaches the committee level. Neither the chancery of the Parliament nor the respective responsible ministries have any discretion on the relevance of EU legislative proposals for subsidiarity. All documentation is handled and forwarded automatically. The selection takes place in the NR and the BR at the committees' level, where proposals are subject to a political discussion.

The recommendations of the ministries and the subsidiarity analyses they provide are an important source of information for the NR and BR; however they are not binding.

Moreover, there is also no filtering procedure between the federal and the regional level. All information is automatically forwarded to the regions through the national contact point by way of an electronic newsletter "*Neues von der Europäischen Union*"<sup>6</sup>. Additionally, for every calendar year, responsible federal ministries forward to the regions information about the legislative forward planning of the European Commission in the given policy sector. The national contact point (*Verbindungsstelle der Bundesländer*) coordinates distribution of this information to the regions. The office of the national contact point is embedded within the government office of Lower Austria in Vienna. The main task of the national contact point is to support the regions in coordinating their views and circulating information for the purposes of national regulation and decision making. Since the national contact point has long practice and a well-established network between regional institutions, it lends itself very well to the coordination also in matters concerning subsidiarity scrutiny. It facilitates the exchange and circulation of documents, information and views and in this way contributes to a better preparation and coordination of work within the BR.

At regional level, filtering takes place through the office of the president of the parliament or through the parliaments' chanceries. Nationwide, they are organised into the conference of the presidents of the regional parliaments (*Landtagspräsidentenkonferenz*) and the conference of the directors of the

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<sup>6</sup> <http://www.parlament.gv.at/PAKT/AKT/EUMAIL/>.

regional parliaments (Landtagsdirektorenkonferenz), where they exchange relevant information about cases potentially relevant for subsidiarity.

### **Human resources and capacity building**

The chancery of the (federal) Parliament is currently relying on the existing resources. The representative office of the Parliament in Brussels is also involved in the exchange of information and documentation. Expansion of human resources is envisaged in the future, according to the development of workload, but nothing concrete has yet been planned.

Within the administration of the chancery, both the NR department and the BR department have a unit responsible for assisting the work of the parliamentary committees. The EU committees of each chamber have their own administrative secretariats comprising two to three specialised employees.

Most regional parliaments rely on the existing resources. They have undertaken in-house adjustments by updating and training their staff in the functioning of the provisions of the new Treaty. To date, experiences with subsidiarity scrutiny are still very limited and do not shed enough light on the actual needs and organisational challenges of a smooth functioning of subsidiarity scrutiny. Some regions underline that the human resources at their disposal are anyhow insufficient and overstretched, but due to financial constraints they are not able to increase their staff. Therefore, in most regions, an expansion of the existing resources, as well as implementing specific procedures, is postponed until they have gained more practical experience with subsidiarity scrutiny.

Many regional parliaments highlight the cooperation and support they receive from their governments in preparing and conducting the subsidiarity analysis. This cooperation takes place regardless of the fact that regional governments have no formal role to play in the subsidiarity scrutiny in Austria (at best they may address their parliament, or directly the BR, with their concerns).

## **Cooperation with other national/regional parliaments**

Except for information pooling via IPEX, there are no other formal forms of cooperation and information exchange between either of the chambers and other national parliaments. In addition to the publication on the IPEX website, other national parliaments are informed by way of informal communications about reasoned opinions tabled by the Austrian Parliament through the Liaison Office in Brussels. Similarly, reasoned opinions and available subsidiarity analyses from other national parliaments are circulated among the members of the NR and the BR. The BR also participates in the SMN and circulates among its members all documents received through this network.

Regions would also find it useful to have access to the subsidiarity analyses of other parliaments in the EU, both national and regional. The possibility to consult such analyses on a timely basis would be a welcome source of help in the work of the Austrian regional parliaments on subsidiarity.

Apart from the BR as the parliamentary forum of exchange, Austrian regions can also exchange opinions and coordinate their actions on subsidiarity through a national contact point (Verbindungsstelle der Bundesländer). The office of the national contact point is embedded within the government office of Lower Austria in Vienna. The main task of the national contact point is to support the regions in coordinating their views and circulating information for the purposes of national regulation and decision-making. Since the national contact point has long practice and a well-established network between regional institutions, it lends itself very well to coordination also in matters concerning subsidiarity scrutiny. It facilitates the exchange and circulation of documents, information and views and in this way contributes to a better preparation and coordination of work within the BR.

Furthermore, the conference of the presidents of the regional parliaments (Landtagspräsidentenkonferenz) and the conference of the directors of the regional parliaments (Landtagsdirektorenkonferenz) help to coordinate the work between parliaments. They provide for the additional exchange of information between key figures in the regional parliaments and can give an “early warning” about EU legislative proposals that may be relevant for subsidiarity scrutiny.

Both conferences have an important role in the agenda setting of the regional parliaments concerning questions of subsidiarity.

Vorarlberg parliament cooperates on an individual basis with the regional parliaments of Bavaria and Baden-Württemberg. The Tyrol parliament cooperates individually with the regional parliament of Trentino-Alto Adige (South Tyrol).

Replies to the questionnaire reported different assessments of the existing coordination mechanisms. The Vienna parliament suggests that cooperation through BR, the national contact point, the conference of the presidents of the regional parliaments and the conference of the directors of the regional parliaments is sufficient and works well. Trans-border cooperation among regions of different Member States would be welcome, although difficult to implement due to costs, language barriers, different regional structures and tight deadlines defined by the Treaty for delivering opinions. The Tyrol and Vorarlberg parliaments welcome the idea of better coordination and cooperation, but reveal no specific details as to how they would envisage it.

### **Visibility /access to the results of the subsidiarity analyses**

All decisions of the NR and BR, minutes of the sessions and motions tabled are available to the public through the electronic resources of the Austrian Parliament. Decisions and documentation concerning subsidiarity scrutiny are published in the official communications of the parliamentary information office (“Aussendungen der Parlamentskorrespondenz”).

The BR underlined that documentation and information received from CALRE is a valued resource, but its main addressees are the regions and their legislatures. It is at the discretion of the regional parliaments to consider these analyses and information in their decision-making. The BR does not directly receive the support and information provided by CALRE, RELEG or the CoR. The input of these networks and organisations is taken up by the regional parliaments and integrated into the discussion within the BR through their representatives.

The responses to the questionnaire from the regional parliaments highlight the fact that the information procedure is sufficiently transparent and accessible. Members of parliaments have unrestricted access to all information relevant for the procedure of subsidiarity scrutiny. Representatives of the Vienna parliament suggest that there are even too many sources of information available and the abundance of resources and information channels as well as lack of central coordination actually lead to confusion.

## **Cooperation between the Austrian Parliament and the regional parliaments**

### **Transmission of EU legislative drafts**

Regional parliaments have – as explained above – the constitutional right to full information about EU legislative proposals and relevant documents (e.g. expertise of the federal ministries), but also information about deadlines and other important formal and procedural requirements. To the best of the regional parliaments' knowledge all information is passed to them without any delay or preliminary filtering.

### **Time limit for expressing regional opinion(s)**

Regional parliaments are informed in each individual case about deadlines applying to BR for submitting the reasoned opinion. Delegating the subsidiarity scrutiny to the EU committee of the BR is a response to the short eight-week deadline, while at the same time the regional parliaments must also have an opportunity to deliver their opinions. The committee procedure is swifter than the plenary one, and should allow a longer time frame for the regional parliament to elaborate and deliver their inputs. There is no formal deadline for the regions to do so, with a view to mutual understanding of the urgency and of the need for good cooperation. Across the regions, progress is coordinated through the conference of the presidents of the regional parliaments (Landtagspräsidentenkonferenz).

### **Taking the regional opinion(s) into account**

Since the NR and BR take decisions concerning subsidiarity scrutiny independently of each other, the NR is in no way obliged to consider the opinion



of the BR in its decision-making, let alone the opinions of the regions. The BR shall, according to the BVG, consider the opinions submitted by the regional parliaments; however, these opinions have no binding force on the BR, neither must they be obeyed by the respective representatives of the regions in the BR. Members of the BR dispose of a free mandate and thus are allowed to represent a different opinion than the one delivered by their parliaments. This issue is relevant from the point of view of the political composition of the BR. Members of the BR sit in political groups, which may differ from parties forming the majority in the regional parliaments. A member of the BR may thus oppose the opinion delivered by his/her parliament because of a different political affiliation.

The chair of the conference of the presidents of the regional parliaments can be invited to address the EU Committee of the BR on behalf of the regional parliaments, but his voice in the procedure is purely advisory. The national contact point is responsible for circulating the agendas of the forthcoming BR committee meetings among the regional parliaments. In this way the regional parliaments are made aware of subsidiarity-related discussions planned in the BR and, acting through their presidents, they may seek to prompt an address by the chair of the conference of the presidents of the regional parliaments on their behalf if they deem it necessary.

### **Differing points of view at national and regional levels**

A difference in opinion between the regional and national levels has to date not occurred (according to the information made available by the Vienna parliament: it observed that experiences with subsidiarity scrutiny have been too few and far between in general to judge its efficiency and workability).

During the deliberations on the L-BN many regional parliaments expressed the desire that subsidiarity statements coming from the regions should accompany the reasoned opinions and other decisions concerning subsidiarity adopted by the BR. Similarly, many regional parliaments regret that only the BR is entitled to action before the CJEU on grounds of subsidiarity infringements. One of the ideas raised during the discussions on LB-N was to allow a “minority action” in

front of the Court (Salzburg, Lower Austria). Those demands have ultimately not materialised.

### **Follow-up / feedback from the national parliament**

At the moment, the NR has no obligation to communicate its decisions concerning subsidiarity to regional parliaments. The latter confirmed that to date they have no knowledge and/or experiences with reasoned opinions issued by the NR. However, regional parliaments are informed about all decisions and motions concerning subsidiarity adopted by the BR. This right is guaranteed by the BVG through the amendments introduced with the L-BN, and is additionally reinforced in the rules of procedure. Decisions concerning subsidiarity are also communicated to the Austrian members of the European Parliament.

### **Closer cooperation needed to be developed?**

There seems to be no demand for creating additional cooperation forums or organisations among the Austrian regions themselves. They can rely on the BR and on the coordination offered through the national contact point for the regions and the conference of the presidents of the regional parliaments. Yet, the regions replying to the questionnaire suggest that a sort of cooperation or exchange of information should be developed between the regions and the NR, as well as with other parliaments within the EU.

The deadlines imposed by the Treaty are very tight to observe in a multilevel system. The feasibility of their active and regular involvement in subsidiarity scrutiny is very narrow. Consequently, regional parliaments would appreciate a more timely possibility of involvement in the subsidiarity scrutiny.

Synoptic table: the enforcement of the Early Warning System in Austria

	National level		Regional level
Procedures followed by the national Parliament and the regional Parliaments			
	Nationalrat	Bundesrat	
Subsidiarity scrutiny procedures	Yes	Yes	Yes, feeding into the BR
Filtering procedures	No	No	Through chancery and presidium's influence on agenda setting
Human resources and capacity building	No adjustments, reliance on existing resources for the moment	No adjustments, reliance on existing resources for the moment	Various responses: no adjustments for the moment in expectation of first results that should reveal needs for adjustments
Cooperation with other national/regional Parliaments	Only through IPEX	Through IPEX and SMN	Various responses: ad hoc contacts with selected regions in Germany and abroad cooperation through CALRE and SMN no significant or very sporadic cooperation
Visibility/access to the results of the subsidiarity analysis	Sufficient	Sufficient	Overall sufficient
Cooperation between the national Parliament and the regional Parliaments			
	Nationalrat	Bundesrat	
Transmission of EU draft legislative acts	Automatic procedure	Automatic procedure to	Automatic procedure, documents received

		the regional executives through national contact point	by regional executive branches through national contact points and forwarded to regional parliaments
Time limit for expressing regional opinion(s)	Eight weeks according to Treaty	Eight weeks according to Treaty	No time limits; regional parliaments are made aware that they need to deliver their opinions to the BR in time for the BR to observe the deadline
Taking the regional opinion(s) into account	-	Explicit: common opinion by all regions formed by BR majority	Regional opinions feeding into the debate in the BR
Differing points of view at national and regional levels	Independent decision by simple majority	Independent decision by simple majority	Independent decisions by every regional parliament feeding into a majority in the BR
Follow-up/feedback from the national Parliament	No duty to inform the regional parliaments	Automatic information to regions, all BR members and Austrian MEPs	Information from BR transferred through the national contact point to regional governments and from them to regional parliaments
Does closer	Current system	Current	Various replies:

cooperation need to be developed?	deemed sufficient, further implementation measures under discussion	system deemed sufficient	need to develop further frameworks of cooperation no need to develop new structures, but exchange of information always welcome
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## 2.1.2. Belgium<sup>7</sup>

### General background

The Belgian Federal Parliament is bicameral. The House of Representatives is composed of 150 directly elected members. The Senate is composed of 71 Senators<sup>8</sup> (and three members of the Royal House). The House of Representatives is the political chamber *par excellence*, it holds the executive to account, votes motions of confidence and is the primary legislator. The Senate is more of an assembly for long-term reflection, as well as being a chamber in which the communities are represented (not the regions) and can be used to deal with inter-community tensions, in particular regarding legislative initiatives that are considered harmful by one of the federated entities.

The Belgian State is structured, due to a number of consecutive constitutional reforms, as a complex federal state. The Belgian Federation is tailored on two types of political entities, namely, Communities (Flemish, French and German)

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<sup>7</sup> The reader should bear in mind that for Belgium, we received replies to our questionnaire from the Belgian Senate and the Flemish Parliament. This part is mainly based on the information received and does not reflect the position of the Belgian Federal Parliament as such or of all the regional/community legislative assemblies. Additional information was obtained from telephone interviews with officials of the several parliaments and from academic sources. Two publications provide an interesting analysis of the role of Belgian parliaments in European decision-making processes: *F. Delpérée, F. Dopagne (2010) Le dialogue parlementaire Belgique- Europe*. Bruylant, Bruxelles, p. 154. and *L. Van Looy (2007) Het Vlaams Parlement als 'National Parlement' in de Europese Unie (Ceci n'est pas une fiction)*. Tijdschrift voor Wetgeving: Omnilegie, p. 28-49.

<sup>8</sup> 40 senators are directly elected, 21 senators are appointed by the Communities and 10 senators are co-opted by their peers.

and Regions (Flanders, Wallonia and Brussels-Capital). Each of the Regions and Communities has a parliamentary assembly. However, the Flemish Region and the Flemish Community choose to merge their institutions into one Flemish Government and one single Flemish Parliament. Thus, there are seven legislative assemblies<sup>9</sup> in the Belgian Federation. In addition, within the bilingual Brussels-Capital Region, community affairs are handled by a French Community Commission (COCOF), a Flemish Community Commission (COCON/VGC) and a Common Community Commission (COCOM). The members of the language groups in the Brussels Regional Parliament constitute the assemblies for the different Community Commissions<sup>10</sup>.

The case of Belgium is somewhat unusual, as it is the sole Member State to have introduced a specific unilateral declaration<sup>11</sup> to the Lisbon Treaty, stipulating that the parliamentary assemblies of the Regions and the Communities would be regarded as national parliaments when an EU draft legislative proposal falls within their competences. The Belgian authorities were clearly set on providing a significant role for regional and/or community parliaments in the subsidiarity analysis set out by the Lisbon Treaty. This results from the persistent concern in the Belgian Federation to secure possibilities for a significant regional/community involvement in EU decision-making.

In anticipation of the subsidiarity check as foreseen in the rejected draft Constitutional Treaty, the Belgian parliamentary assemblies drafted an inter-parliamentary cooperation agreement in 2005.<sup>12</sup> This agreement was signed by

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<sup>9</sup> The Federal House of Representatives: 150 directly elected members; *The Federal Senate*: 71 (+3 royal members) senators; *The Flemish Parliament (FP)*: 124 directly elected members; *The Walloon Parliament (WP)*: 75 directly elected members; *The Brussels Regional Parliament (BP)*: 89 directly elected members (of which 72 are elected from francophone party lists and 17 from Flemish party lists); *Parliament of the French Community in Belgium (FCP)*: 94 members of whom 75 are members of the Walloon Parliament and 19 members are elected by the francophone group in the Brussels Regional Parliament; *Parliament of the German-speaking Community in Belgium (GCP)*: 25 members directly elected by the voters of the German language area of Belgium.

<sup>10</sup> For instance, 72 members of COCOF, 17 members of VGC.

<sup>11</sup> “(51) Declaration by the Kingdom of Belgium on national parliaments. Belgium wished to make clear that, in accordance with its constitutional law, not only the Chamber of Representatives and Senate of the Federal Parliament but also the parliamentary assemblies of the Communities and the Regions act, in terms of the competences exercised by the Union, as components of the national parliamentary system or chambers of the national Parliament”. Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, Official Journal of the European Union, C 83 of 30.3.2010, p. 355. Declaration No 51 is unilateral and not part of the EU Treaties themselves.

<sup>12</sup> Ontwerp van samenwerkingsakkoord tussen de Federale Wetgevende Kamers, de parlementen van de Gemeenschappen en de parlementen van de Gewesten ter uitvoering van het Protocol betreffende de toepassing van de beginselen van subsidiariteit en evenredigheid gehecht aan het Verdrag tot vaststelling van een Grondwet voor Europa

the Presidents of all legislative assemblies and organised the participation of the Regional and Community parliaments in the application of the subsidiarity scrutiny mechanism. In addition to the failed ratification process of the Constitutional Treaty, the Council of State<sup>13</sup> identified internal legal obstacles to carrying out the provisions of the 2005 cooperation agreement. The legal issues highlighted by the Council of State were:

There was no explicit legal basis for parliaments to conclude inter-institutional cooperation agreements. Such a legal basis exists for executives in the Special Law on the Reform of the Institutions of 8 August 1980 but it is unclear whether these powers also extend to parliaments. The Council of State advised the creation of an explicit legal basis through an amendment of the Special Law on the Reform of the Institutions of 8 August 1980. Amendments to this law require a two-thirds majority and a majority of each language group;

The 2005 cooperation agreement foresaw an opinion to be delivered by the Council of State in the event that parliamentary assemblies disputed each other's competencies to submit a reasoned opinion under the subsidiarity scrutiny system. This extension of the role of the State Council again required an amendment of the coordinated laws on the Council of State. The Council of State would, through the evaluation of jurisdictional disputes between parliaments, effectively carry out a new task that needed to be provided for in its statute.

The 2005 cooperation agreement lost its immediate relevance and applicability because the Draft Constitutional Treaty was not ratified. Yet, it is worthwhile considering the content of the 2005 cooperation agreement for the present study, as it provides an elaborate blueprint for the possible execution of subsidiarity checks in Belgium. The 2005 cooperation agreement provided a system for vote distribution between the parliaments and a system for jurisdictional dispute settlement (see below).

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[http://www.dekamer.be/kvvcr/showpage.cfm?section=/pri/europe&language=nl&story=sub.xml&rightmenu=right\\_pri](http://www.dekamer.be/kvvcr/showpage.cfm?section=/pri/europe&language=nl&story=sub.xml&rightmenu=right_pri).

<sup>13</sup> The Council of State section legislation offers opinions on the drafting quality of binding measures and verifies the conformity with existing regulatory measures.

The issue of adapting the internal Belgian structures to a subsidiarity check re-emerged with the Lisbon Treaty. A new inter-parliamentary cooperation agreement was discussed and established between the parliaments at an administrative level in July 2008<sup>14</sup>, copying most aspects of the preceding 2005 agreement, but also introducing some new elements to align the cooperation agreement with the content of the Lisbon Treaty. The exact status of the 2008 cooperation agreement is however not entirely clear. The agreement was endorsed at an administrative level but was never actually signed by the presidents of all the involved parliaments. The 2008 cooperation agreement has thus so far not taken effect. The 2008 inter-parliamentary cooperation agreement has been blocked because of persisting legal and political difficulties:

The provision of a clear legal basis for parliaments to conclude cooperation agreements has not yet been settled. This issue had already been flagged by the Council of State concerning the 2005 cooperation agreement but has not yet been resolved;

The cooperation agreements of 2005 and 2008 both foresee an important role for the Council of State to issue opinions on jurisdictional disputes between parliaments regarding subsidiarity checks. The coordinated Laws on the Council of State would need to be amended to extend the Council of State's powers in this area.

Legislative proposals to amend the Special Law and the laws on the Council of State were introduced in the House of Representatives and the Senate in 2008. However, government instability caused by the banking crisis and the continued but failed efforts to conclude a general agreement on a comprehensive institutional reform slowed down the revising process. Since the June 2010 elections, there have been ongoing coalition negotiations to set up a new government, but without much success; meanwhile a caretaker government has been in place. This has led to inertia in implementing the subsidiarity provisions of the Lisbon Treaty. The required revision of the Special Law imposes special majorities (e.g. a two-thirds majority and a majority in each language group) that

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<sup>14</sup> *Vlaams Parlement*, Gedachtenwisseling over de stand van zaken aangaande het intra-Belgische samenwerkingsakkoord noodzakelijk voor de operationalisering van een aantal bepalingen van het verdrag van Lissabon. *Stuk 1807 (2007-2008) – nr. 1*, pg 1-33.



seem hard to achieve in the absence of a general institutional reform package, on which a political consensus has been sought in vain during the past three years. In addition to the difficulties regarding the legal basis that are of a more legal/technical nature, the problems with the 2008 cooperation agreement also unveiled a relatively new political sticking point. The simplified revision procedure foreseen in article 48 (7) of the Treaty on European Union, allows national parliaments to state their opposition to the use of so called ‘passerelles’. Since Belgium considers its Regional/Community parliaments to be part of the national parliamentary system, it could entail that each of the seven parliaments (and possibly COCOF) being able to block the application of a ‘passerelle’ clause. This issue is unresolved and in particular the Flemish parliament seems to insist on having a possibility to voice opposition to the application of ‘passerelle’ measures.

Although Belgian parliaments started preparing at a very early stage for the subsidiarity checks and to incorporate Regional/Community parliaments in this work, the unfortunate conclusion today is that the efforts have largely stalled. The combination of legal constraints, political disagreements and the general atmosphere of political stalemate have hampered an effective execution of a system of subsidiarity checks.

## **Procedures followed at the national/regional levels**

### **Subsidiarity scrutiny procedures**

#### **House of Representatives**

Following the September 2006 Barroso initiative, the secretariat of the Advisory Committee on European Affairs now screens European legislative proposals and drafts a synthesis note, which is subsequently transmitted to the responsible parliamentary committee.

If it concerns an entirely new legislative proposal then the secretariat of the Advisory Committee on European Affairs will provide a draft subsidiarity advice, which will be forwarded to the responsible committee. Subsequently, it is up to the competent parliamentary committee to establish the final subsidiarity advice. The subsidiarity advice can be adopted in the competent committee or, if one third of the committee members so request, it can be adopted by the plenary.

## Senate

The Belgian Senate has already established a procedure to conduct the subsidiarity check under the EWS framework. All EU documents arrive in a specific mailbox<sup>15</sup> managed by the European Affairs Unit of the Senate. These documents are automatically forwarded to the House of Representatives and all regional/community parliaments.

In the Senate, the European Affairs Unit proposes a selection of documents depending on what is most relevant at the time, whether the federal level has responsibility for the issue, and the extent to which the issue is relevant to the institution or its members. The selection of documents is sent to the Chairman of the European Affairs Committee for approval. Once approved, the documents are sent by the European Affairs Unit, together with a legal note on the competence of the Senate, to the specialised committee(s) involved. If one member asks to put the document on the committee's agenda, the Chairman of this committee has to do so.

If the document is not put on the agenda, it is considered to be in line with the principles of subsidiarity and proportionality. If it is put on the agenda but not discussed, or if it is discussed but no remarks are made, the document is considered to be in line with the principles of subsidiarity and proportionality. In any of these scenarios, the procedure then stops. If remarks are made however, the committee drafts an opinion on the matter which, after being adopted by the committee, needs to be approved by the Plenary of the Senate in order to be considered a Senate opinion.

The opinion is then sent to the secretariat of the Conference of Speakers of the Belgian legislative assemblies. This secretariat gathers together any other opinions from other Belgian parliaments on the matter and sends them to the relevant European institutions.

The way these opinions are dealt with and assessed is currently under discussion. This procedure is used for subsidiarity and proportionality monitoring and does not prevent the Senate from drawing up opinions on the documents (legislative and non-legislative), which fall under the so-called "Barroso-initiative".

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<sup>15</sup> [eurodoc@belgoparl.be](mailto:eurodoc@belgoparl.be).

The Belgian Senate has not established a specific communication procedure with the EU institutions under the EWS as it uses the communication channels established by the EU institutions for this matter.

The subsidiarity scrutiny procedures in the Belgian Parliament can be summarised as follows:

All EU documents arrive in a specific mailbox managed by the Belgian Senate, and are automatically forwarded to the House of Representatives and the regional/community parliaments.

### **House of Representatives**

No information

### **Senate**

The European Affairs Unit proposes a selection of documents to be approved by the Chairman of the European Affairs Committee. Once approved, the documents are sent to the relevant specialised committee(s). A dossier is put on the agenda of the competent committee only if a member asks for this to happen.

If any remarks are made on the document on the agenda, the committee drafts an opinion on the extent to which the document is in line with subsidiarity. The opinion has to be approved by the committee and then by the Plenary of the Senate.

The opinion is then sent to the secretariat of the Conference of Speakers of the Belgian legislative assemblies. This secretariat then gathers together any other opinions from other Belgian parliaments on the matter and sends them to the relevant EU institutions.

### **Cooperation between Chambers**

The House of Representatives and the Senate have established a Federal Advisory Committee for European Affairs. The Federal Advisory Committee is

made up of 10 members of the House, 10 senators and 10 members of the European Parliament.

## **Regional and Community Parliaments**

According to Declaration 51, every parliament which is part of the Belgian parliamentary system is entitled to carry out independently a subsidiarity test on the EU draft legislative acts that fall within their competence. This means that most community and regional parliaments are considering changing their rules of procedure to adapt them to the EWS provisions, but in most cases the discussions are at a preliminary stage and have not yet been formalised or finalised.

The French Community Parliament has already changed its internal procedures to accommodate the subsidiarity scrutiny process.<sup>16</sup> The subsidiarity check is carried out by the committee for international relations and European issues. The reasoned opinions can be adopted by this committee or by the plenary.

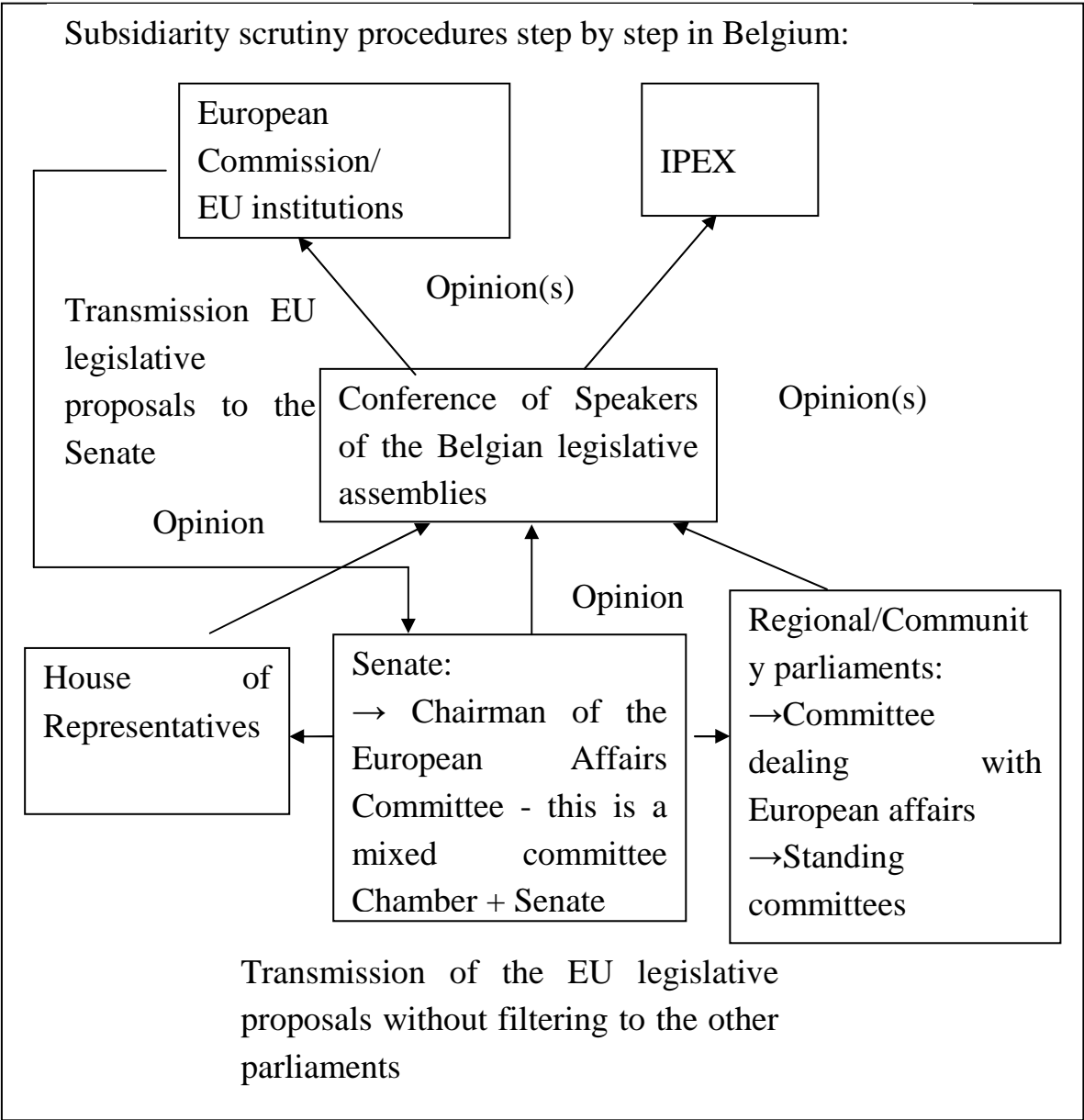
The administration of the Flemish Parliament is currently developing a subsidiarity procedure that still needs to be approved by the members of the parliament (MPs). In short, the draft European legislation will be debated by the standing committee of the Flemish Parliament responsible for the issue (e.g. European draft legislation on the environment will be debated by the standing committee on the environment). As soon as the internal subsidiarity procedure is developed and approved, the principle of subsidiarity will be further brought to the MPs' attention. In addition, the administration of the Flemish Parliament said that it had not established a specific communication procedure with the EU institutions under the EWS.

As yet, no formal post-Lisbon subsidiarity checks have been carried out by any community and/or regional parliaments. The Flemish Parliament did mention however that they had carried out two subsidiarity tests, both under the CoR SMN. However, no data is available on any subsidiarity analyses having been carried out by the regional parliament under the EWS.

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<sup>16</sup> See French Community Parliament rules of procedure, article 29:  
[http://www.pcf.be/ROOT/PCF\\_2006/public/documentation/reglement.html#SEC-id5727709](http://www.pcf.be/ROOT/PCF_2006/public/documentation/reglement.html#SEC-id5727709).

Regarding coordination with the regional executive, the Flemish administration of the parliament hopes to be able to work with the Flemish government as they have the information and expertise in all the fields in which the administration will have to carry out subsidiarity tests. The Flemish administration of the parliament pointed out in particular that it would like to receive more information on the impact of the proposed EU legislation. An impact analysis, especially for the Flemish region, would be very useful to the parliament and could be provided by the Flemish administration and the Flemish government. The Flemish Parliament also said that it regularly invited NGOs, experts and stakeholders to hearings as part of the discussions on a bill and would probably do the same to prepare its subsidiarity analyses.



**Filtering procedures**

The Belgian Senate is the only assembly that receives documents from the European institutions and does not filter them: all documents received are automatically transferred to the House of Representatives and the other parliaments.

The Flemish Parliament said that it was still working on its internal subsidiarity procedure, but that it was likely that its administration would filter the

documents – probably the European Office – and only the most relevant documents for Flanders would be transferred to the standing committees.

### **Human resources and capacity building**

In order to be prepared for the new tasks under the EWS, the Flemish Parliament established a European Office in 2005. This Office would raise awareness at the EU about its members and staff by emphasising that the Flemish Parliament was closely involved in the European decision-making process and the subsidiarity procedure. The European Office was currently developing a subsidiarity procedure.

As regards the level of expertise of the regional parliament on subsidiarity and its administrative and financial capacity to carry out tasks under the EWS, the Flemish Parliament underlined that it was too early to take a position on this. The Flemish Parliament was keen to get support from the administration of the Flemish government however. In fact, the Flemish Parliament considered that one of the biggest challenges was getting MPs interested in European issues.

### **Cooperation with other national/regional Parliaments**

The Senate works with national parliaments in other Member States through personal contacts gained through the network of national parliaments' representatives at the European Parliament. National parliaments in other Member States are also informed about the Belgian Senate's position via publications on the IPEX website.

The Flemish Parliament said that it had not established any information/coordination mechanisms with the other Belgian regional/community parliaments, nor with regional parliaments in other Member States, apart from within the CoR SMN. The Flemish Parliament did say however that this sort of cooperation could provide an additional source of information and expertise. The Flemish Parliament attends the meetings organised by CALRE as well as CALRE's annual plenary assembly.

## **Visibility/access to the results of the subsidiarity analysis**

The Belgian Senate underlined that the same transparency policy applied to subsidiarity analysis as it did to all legislative procedures in the parliament (public debates, official documents available on the website, etc.). The Belgian Senate therefore considered that the EU institutions and other Member States' national parliaments were sufficiently aware of the subsidiarity analysis results. The Flemish Parliament said that it tried to make the procedure as transparent and accessible to the public as possible. It would publish all documents and reasoned opinions on its website.

## **Cooperation between the national Parliament and the regional/community Parliaments**

The 2008 cooperation agreement between all the Belgian parliaments is not yet in force, but it can already be used as a framework for subsidiarity checks. The regional/community parliaments were involved in the negotiation and conclusion of the agreement.

## **Transmission of EU draft legislative acts**

As already mentioned above, transmission of EU documents is organised via a specific mailbox managed by the Senate. Information is transmitted automatically to all other parliaments immediately and simultaneously. The parliaments indicate within two weeks if they consider that a legislative proposal falls within their competence. Other parliaments can then dispute the authority of the parliament that notified its interest in a particular proposal.

## **Time limit for expressing regional opinion**

Belgian regional/community parliaments have seven weeks<sup>17</sup> to carry out their subsidiarity test. If a parliament considers that the subsidiarity principle has been infringed, it has to communicate a reasoned opinion by the last day of the

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<sup>17</sup> The Flemish Parliament said that as the seven-week period starts from the point when the draft legislation has been published in all the official languages of the European Union, it hopes to have more time than those seven weeks in practice.



seventh week to the secretariat of the Belgian national parliamentary system and the Conference of Presidents of the seven parliamentary assemblies.

### **Taking into account the regional opinion(s)**

The process of setting up a mechanism at national level to coordinate regional/community parliaments' work when their interests are at stake in an EU legislative act is currently under debate between the Belgian legislative assemblies. The issue of how the Federal Parliament will take into account the perspectives/concerns expressed by regional/community parliaments in their subsidiarity analysis is also being considered, as is how the final decision on the reasoned opinion will be taken.

However, according to the 2005 and 2008 cooperation agreements, for the mixed legislative proposals (which deal with both federal and regional/community competences), the two Belgian subsidiarity votes are divided between the federal and the regional levels. There is no need for a consensus on a 'level basis' to make use of the subsidiarity vote. As soon as one chamber (at federal level) considers that a legislative proposal is in breach of the subsidiarity principle, at least one subsidiarity vote is used. Furthermore, if (at least) one parliament at regional level has the same opinion, the second subsidiarity vote is also be used. All the reasoned opinions of the seven parliaments, together with the subsidiarity votes, are sent to the European Commission on behalf of the Belgian Parliamentary System, making it clear which opinion has been given by which parliament.

For the so-called exclusive legislative proposals (concerning either federal or regional competences), the competent level is 'master' of the two Belgian subsidiarity votes. Once again, no consensus is needed. In theory, five regional parliaments could be affected by a (exclusively regional) legislative proposal, but it is enough for two regional parliaments with a different linguistic status (e.g. the Flemish Parliament (Dutch speaking) and the Walloon Parliament (French speaking) to consider that a proposal infringes the principle of subsidiarity, to send the two Belgian subsidiarity votes to the European Commission.

Another important element of the cooperation agreement relates to the possibility of referring a case to the CJEU (CJEU) on subsidiarity grounds. The 2008 cooperation agreement, which – it should be remembered – was not signed

by all the parliaments, stipulates that a case would be referred to the CJEU if one competent parliament made a request for this to happen. However, both versions of the cooperation agreements of 2005 and 2008 leave much to be decided as regards the recourse to the CJEU. It is not at all clear whether these sorts of subsidiarity cases would be submitted by the federal/regional executive or by the parliaments in their own right. Internal Belgian legal and administrative processes for CJEU referrals would also have to be matched with the European requirements. So far, the issue has been identified by the administrations involved, but no conclusions have yet been reached on the issue.

The Belgian Senate underlined the fact that all relevant documents and opinions are considered when any subsidiarity and proportionality concerns are examined, including – potentially – the positions of European associations such as REGLEG and CALRE.

### **Differing points of view at national and regional levels**

According to the system described above, no consensus is required: all reasoned opinions, even if they are contradictory, will be sent to the European Commission. However, the voting rights issue forms part of a wider debate on how these rights should be divided between all national and regional/community legislative assemblies. The conclusion of this debate will be part of the State reform.

The 2008 inter-parliamentary cooperation leaves the vote allocation of the 2005 cooperation agreement unchanged: a parliamentary assembly can dispute the competence of another assembly to issue a reasoned opinion. The Council of State needs to be consulted if there is a dispute on competence. If the matter is not settled once the Council of State has given its opinion, then the dispute is referred to the Conference of Presidents of the seven parliamentary assemblies.

One vote on the subsidiarity check is cast when one competent parliament has communicated a reasoned opinion. If more than one reasoned opinion is issued by different competent parliaments, the votes are allocated depending on the competences involved and the language systems to which the parliamentary assemblies belong.

This last point requires further clarification as a relatively complex system of vote allocation was developed in the 2005 cooperation agreement. To ensure

that the internal distribution of prerogatives is in line with the votes for parliaments under the subsidiarity scrutiny mechanism, the inter-parliamentary agreement allocates the votes in the following way:

1) Exclusive federal prerogatives: for legislative proposals that involve exclusive federal prerogatives, two votes are cast when both the House of Representatives and the Senate issue a reasoned opinion.

2) Mixed federal and community/regional prerogatives: for legislative proposals that involve both federal prerogatives and regional and/or community powers, two votes are cast when one federal assembly and one community or regional assembly issue a reasoned opinion.

3) Community and/or regional prerogatives: for legislative proposals involving prerogatives relating to the exclusive powers of the communities or of the regions, two votes are cast when two competent parliaments belonging to different language systems issue a reasoned opinion.

4) Exclusive prerogatives of one parliament: for legislative proposals regarding the exclusive prerogatives of one single parliament, that parliament can cast two votes. For scenario (3) when only Community and/or Regional prerogatives are affected by a legislative proposal, additional arrangements are made to ensure that one language group cannot cast both votes. For both votes to be cast, when only regional and/or community powers are at stake, a parliament from at least one other language system needs to issue a reasoned opinion.

The table below provides an overview of the vote combinations and the corresponding number of votes allocated by the Belgian inter-parliamentary cooperation agreement<sup>18</sup>:

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<sup>18</sup> The table can be understood with the help of the following examples: if the Flemish parliament (FP) and the Brussels-Capital parliament (BP) deliver an opinion then two votes will be cast. The FP is part of the Flemish language system while the BP has a bilingual system; if the Walloon parliament (WP) and the Flemish parliament (FP) deliver an opinion then two votes will be cast. The FP belongs to the Flemish language system: the WP has a French-speaking system; if the Walloon parliament (WP) and the Francophone Community parliament (FCP) deliver an opinion, then only one vote will be cast. Both parliaments belong to the French language system.

	Flemish Parliament (FP)	Francophone Parliaments (WP, FCP, COCOF)	Brussels Parliament (BP)	German Community Parliament (GCP)
Flemish Parliament (FP)	1	2	2	2
Francophone Parliaments (WP, FCP, COCOF)	2	1	2	2
Brussels Parliament (BP)	2	2	1	2
German Community Parliament (GCP)	2	2	2	1

## **Follow-up/feedback from the national Parliament**

The Senate mentioned the fact that the following issue was currently under debate between the Belgian legislative assemblies: informing regional/community parliaments about the final reasoned opinion of the Federal Parliament on the extent to which a given EU legislative proposal was in line with subsidiarity.

## **Does closer cooperation need to be developed?**

The Flemish Parliament pointed out that the new EWS provisions could provide an interesting opportunity to discuss and debate European legislation in the national and regional parliaments from the beginning of the decision-making process.

Synoptic table: How the Early Warning System is enforced in Belgium

	National level		Regional level
Procedures followed by the national parliament and the regional parliaments			
	House of Representatives	Senate	Regional/Community parliaments
Subsidiarity scrutiny procedures	-	Yes	The French Community parliament has already revised its internal procedures to accommodate the subsidiarity scrutiny process. The Flemish Parliament is currently developing a subsidiarity scrutiny procedure.
Human resources and capacity building	-	-	The Flemish parliament set up a European Office in 2005 and is keen to get support from the Flemish Government.
Filtering procedure	-	No	The Flemish parliament indicated that it is most likely that its administration will filter EU documents (probably the European Office).
Cooperation with other national/regional Parliaments	-	Yes, through personal contacts gained through the network of national	The Flemish parliament has not yet established any information/coordination mechanisms with the other Belgian regional/community

		parliaments' representatives at the EP and via the IPEX website.	parliaments, or with regional parliaments in other Member States, except under the CoR SMN. However, it said that this form of cooperation could be useful as an additional source of information and expertise. The Flemish parliament also attends CALRE meetings.
Visibility/access to the results of the subsidiarity analysis	-	Sufficient visibility with public debates and official documents available on the website.	The Flemish parliament is trying to make the subsidiarity scrutiny procedure as transparent and accessible to the public as possible. It will publish all documents and reasoned opinions on its website.
Cooperation between the national parliament and the regional parliaments			
	House of Representatives	Senate	Regional/Community parliaments
Transmission of EU draft legislative acts	EU documents are transmitted automatically to all other parliaments immediately and simultaneously once received in the specific mailbox managed by the Senate.		
Time limit for expressing regional opinion(s)	-	7 weeks.	The Flemish parliament argued that as the seven-week period starts from when the draft legislation has been published in all the official languages of the European Union, it

			hopes to have in actual fact more time than those seven weeks.
Taking the regional opinion(s) into account	The 2008 inter-parliamentary cooperation agreement. For mixed legislative proposals, all the reasoned opinions of the seven parliaments (with the subsidiarity votes) will be sent to the European Commission. For exclusive legislative proposals, the competent level is 'master' of the two Belgian subsidiarity votes.		
Differing points of view at national and regional levels	System of vote allocation is determined by the inter-parliamentary cooperation agreement. All reasoned opinions, even if they are contradictory, are sent to the European Commission.		
Follow-up/feedback from the national Parliament	Currently under debate among the Belgian legislative assemblies.		
Does closer cooperation need to be developed?	-	-	For the Flemish parliament, the new EWS provisions could provide an interesting opportunity to discuss and debate European legislation in the national and regional parliaments from the beginning of the decision-making process.



## 2.1.3. Germany

### General background

The legislative functions at federal level in Germany are vested in two institutions: a directly elected federal assembly (Bundestag, BT), and the federal council (Bundesrat, BR), which brings together representatives of regional governments. Their rights and institutional obligations resulting from Germany's membership in the EU are set out in the federal constitution – the Basic Law (Grundgesetz, GG), in the Act on Assuming Responsibility for EU Integration (Integrationsverantwortungsgesetz, IntVG) adopted in 2009, and in acts laying down terms of inter-institutional cooperation on EU matters between the federal government (Bundesregierung) and the BT (EUZBBG, 1993), and between the federal government and the regions (EUZBLG, 1993).

Approximately 598 members of the BT (the exact number of the members of BT in every term varies slightly) are directly elected by universal suffrage every four years. The BT is made up of different political groups. The 69 members of the BR are not directly elected. Every Land is represented by at least three and not more than six representatives of its government and can only exercise its votes *en bloc*. Although The Basic Law does not use the terms “legislative branch” or “chamber”, for the purpose of subsidiarity scrutiny BR acts as the second federal legislative chamber and has been assigned one vote.

This legal framework has procedures for the exchange of information and for general political scrutiny on EU matters between the federal government on the one hand, and the BT and BR on the other. The subsidiarity check will come on top of the existing tasks and responsibilities of the BR and BT, but should benefit from the established good practices and expertise of both chambers on EU matters.

Prior to the entry into force of the Lisbon Treaty, amendments were made to the acts (mentioned above) on EU integration and inter-institutional cooperation, as well as to BT and BR rules of procedure. This ensures that the subsidiarity

check has an explicit legal basis, and spells out the rights and obligations of the BT and BR on subsidiarity<sup>19</sup>.

At regional level, the search to find the most suitable system for subsidiarity scrutiny is still ongoing. There have been a variety of responses from different institutions and the procedures on subsidiarity checks vary across the different regions.

## **Procedures followed at the national/regional levels**

### **Subsidiarity scrutiny procedures**

At federal level the subsidiarity check has been integrated into the regular decision-making process. Since the entry into force of the Lisbon Treaty every EU legislative proposal submitted for debate in the BT and the BR has two headings: Part A and Part B, whereby Part A corresponds to subsidiarity scrutiny and Part B is subject to regular political scrutiny. For decisions taken under heading B, the objective is for each chamber to establish a position on the content of the legislative proposal, which the federal government should consider in its negotiations at EU level. As far as heading A is concerned, the EU Affairs committees of both the BT and the BR will have a special role for the subsidiarity check. The EU Affairs committees must be consulted before a motion to issue a reasoned opinion is submitted to the plenary, or before a referral is made to the CJEU on the grounds of subsidiarity infringement.

The subsidiarity scrutiny procedures in the German legislative (BT and BR) can be summarised as follows:

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<sup>19</sup> The EUZBBG, concerning primarily the BT's rights, was amended in September 2009 and in December 2009. The EUZBLG, on the rights of the BR, was also amended in September 2009, and in July 2010 the Länder and the federal government adopted an additional cooperation agreement. Changes to those acts related mainly a) to extending both chambers' right of information vis-à-vis the federal government on all EU matters, communications and documents related to the subsidiarity scrutiny and b) to procedural questions and legal representation for issuing of a "reasoned opinion" or either of the chambers referring a case to the CJEU.

## **Bundestag**

EU legislative proposals are forwarded to the Presidium of the BT by the Liaison office of the BT in Brussels, and to the competent federal ministry. After a preliminary debate in the plenary, the documents are forwarded to the sectoral committees for discussion.

The sectoral committees examine the extent to which the proposal is in line with the subsidiarity principle. If a committee plans to issue a reasoned opinion, or bring a case before the CJEU on the grounds of subsidiarity infringement, it must consult the EU Affairs committee. A subsidiarity analysis must be presented to the plenary together with the sectoral committee's report and the recommendation for a resolution. This analysis is prepared by the EU department of the BT administration (Referat P1) at the request of the EU committee. The sectoral committee could decide to transfer responsibility for managing the issue to the EU Affairs committee and then present a report and the proposal for resolution to the plenary.

The final vote is taken by the plenary by simple majority upon recommendation of the committee. The presidium of the BT is then responsible for the administrative tasks of communicating the decision to the institutional stakeholders (Bundesregierung, BR, EU institutions, IPEX).

## **Bundesrat**

EU legislative proposals are distributed to all members by the Presidium. The BR President uses his/her discretion to decide whether EU legislative proposals should undergo subsidiarity scrutiny, or the decision is taken following a request from a member of the BR, or a request from a Land. The BR President then distributes them to the sectoral committees depending on the subject. Several committees can discuss the same issue. The EU Committee is always the leading committee for EU-legislative proposals and delivers its opinion last. All members of the BR have the right to access information and debates of any BR committee (without the right to vote). The EU committee usually meets on Fridays, after all sectoral committees have had the chance to discuss the EU

legislative proposals and have assessed whether they need to undergo the subsidiarity scrutiny process.

The EU committee presents the report to the plenary together with a recommendation for a resolution. The report can be adopted by tacit assent, or in a formal vote, by simple majority upon recommendation from the relevant committee. The regions can only exercise their votes (between three and six) *en bloc* and cannot use a proxy (i.e. only the votes of those present count). The presidium of the BR is responsible for the administrative tasks of communicating the decision to stakeholders in the different institutions.

In an emergency, the President of the BR may decide that a special EU Chamber (Europakammer), comprising one member of the BR from every Land, can take decisions on behalf of the BR.

### **Cooperation between the BT and BR**

The BT and the BR work independently and have no obligation to consult each other or take their respective positions into consideration. However, it is customary for the BT and BR to exchange information.

The BT and the BR both receive the original proposal provided directly by the European Commission, and an identical set of documents on an EU legislative proposal from the relevant federal ministry, including subsidiarity assessments. If either BT or BR intended to issue a reasoned opinion or take the matter to the CJEU, the other chamber would be immediately informed, although there is no formal obligation.

### **Regional parliaments (Landtage)**

Individual experiences and perceptions of the subsidiarity principle currently vary across regions. Going by the replies received, the bigger regions (i.e. Bavaria, North-Rhine-Westphalia and Baden-Württemberg) have already implemented a comprehensive procedure and consider that they have sufficient decision-making procedures, human resources and expertise available to handle the subsidiarity scrutiny. Other regions, e.g. Hessen and Saxony, are in the

process of developing procedures to better provide for the cooperation between the regional governments and the parliaments which is necessary for the subsidiarity check. Bremen and Hamburg are taking a “wait-and-see” approach: for the time being their parliaments are relying on existing mechanisms, and will continue to do so until they find a practical need to make adjustments.

Overall, in order to facilitate the cooperation between governments and parliaments which is required for subsidiarity scrutiny, the regions have undertaken a number of legal, procedural and organisational adaptations:

Legal/constitutional means:

- Embedding the process of subsidiarity scrutiny into the regional constitutions;
- Concluding or amending the existing agreements on the exchange of information and mutual cooperation between the executive and legislative branches.

Procedural means:

- Authorising the relevant parliamentary committee to conduct the subsidiarity scrutiny by assigning the entire procedure to that committee;
- Establishing a practice of cooperation among various committees involved in the subsidiarity scrutiny procedure;
- Imposing deadlines for the various stages of the procedure, especially with regard to the exchange of information and cooperation with the executive branch;
- Establishing a special procedure for emergency cases.

Organisational means:

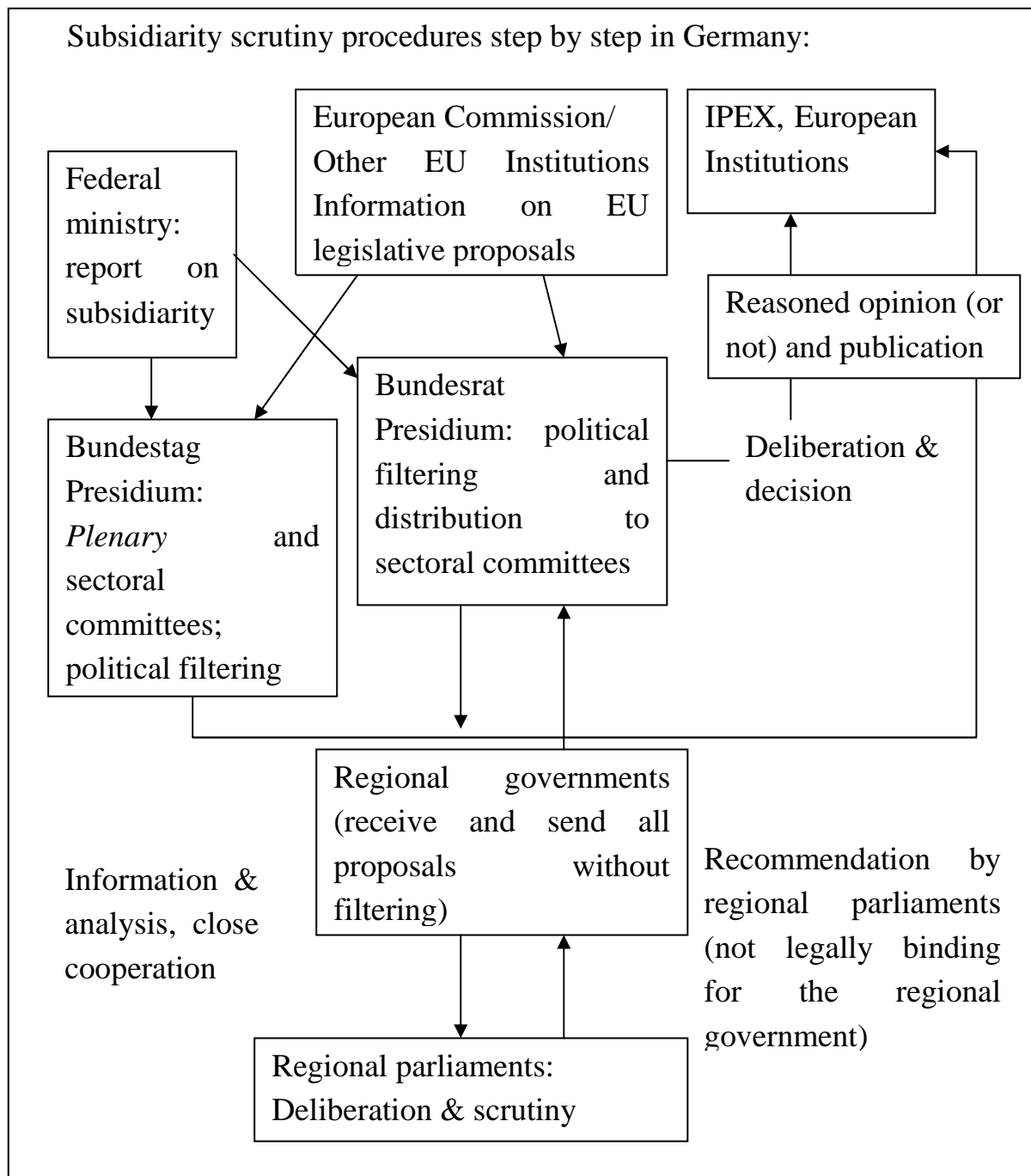
- Establishing a committee responsible for subsidiarity scrutiny.

To date, no parliament at regional level has found it necessary to change its rules of procedure due to tasks and duties arising from the entry into force of the Lisbon Treaty and the subsidiarity check.

Given that the interests of the regions at federal level are represented by their governments (whose selected members or designated representatives sit in the BR) and not by representatives of their parliaments, the impact of regional parliaments on the EWS depends on their relations with their governments. As the same principle applies to the scrutiny of the German federal legislation, the subsidiarity scrutiny procedure for European legislation can benefit from practices which have already been established and is simply an addition to the list of tasks shared between regional parliaments and regional governments in federal law-making.

Officially, communication on subsidiarity scrutiny between the regional and the EU level is channelled through the BR. All regions also have their own representations to EU institutions in Brussels, which they can use to make individual contact with the EU institutions. Only some regions (Bavaria, Baden-Württemberg, Hessen) allocate some of their human resources to representing the specific interests of their parliaments.

Processes for working with non-governmental networks and organisations, such as CALRE and RELEG, also differ from Land to Land. Certain regions are very active in these structures (e.g. Bavaria and Baden-Württemberg); others have not actively participated in any networks or organisations of this type (e.g. Bremen).



### Filtering procedures

At federal level, there is no preliminary selection process on whether EU legislative proposals are relevant to the subsidiarity check. All proposals are automatically forwarded to the BT and BR, both by the European Commission and by the relevant federal ministry. In the BT, the administrative department for EU Affairs simply highlights the proposals that it considers to be relevant for the subsidiarity check before forwarding them to the Presidium. In the BR, it is

primarily the President who decides on how legislative proposals should be shared out between the committees; however the regions may also request that a particular proposal is discussed. The committees in the BT and in the BR screen EU legislative proposals to check that they are in line with the subsidiarity principle and can recommend issuing a reasoned opinion or referring a case to the CJEU. Final decisions are taken by the plenary.

There are no mechanisms for filtering documents between the federal level and the regions: all documents meant for debate in the BR, including EU legislative proposals, must be forwarded to the regional executives.

At the regional level there are no mechanisms for filtering either. Regional statutes, or inter-institutional agreements, state that the governments must keep their parliaments fully informed in a timely way about all matters to be discussed in the BR, and should also make all relevant documents available to them. This includes EU legislative proposals. In practice, regional governments provide their parliaments' ministry with EU draft legislative proposals together with opinions concerning subsidiarity through a relevant Land. In some cases (e.g. Bremen) the government highlights issues which are potentially relevant in an attempt to give an early warning, but has no formal powers of agenda-setting or document selection vis-à-vis its parliament.

With access to all this information, regional parliaments have the discretion to decide which of the EU legislative proposals they wish to submit to scrutiny, and may adopt a resolution asking the government to apply to the BR to issue a reasoned opinion. If the government of a Land intends to present a motion for a reasoned opinion in the BR, it must inform its parliament of its grounds for presenting this motion. The regional parliaments have the right to express their disagreement with the government's opinion, but the parliamentary recommendations are not legally binding on regional governments by virtue of the constitutional rule of own political responsibility of the executives ("*Prinzip der Eigenverantwortung der Regierung*"). However, the government must explain its position if it decides not to follow the parliamentary recommendation.



## **Human resources and capacity building**

At federal level, the BT and BR are separate institutions supported by their own administrative structures, which include departments specialising in European affairs. The head of department must be a senior lawyer. BT and BR committees also have their own secretariats, which are staffed by employees with a legal background.

If a BT committee intends to recommend a reasoned opinion, the EU Affairs department (Referat P1) is responsible for preparing the legal subsidiarity analysis. It must also prepare a subsidiarity analysis if requested to do so by a political group. The department operates from two locations: an office in Berlin and a BT representative office in Brussels. It is also responsible for managing communication between the EU institutions and the BT, managing contacts via IPEX and acting as an early warning point for all EU matters requiring a quick reaction or particular attention from the BT.

The BR has no separate representative office at EU level. Instead, all regions have their individual representations to the EU in Brussels. For some regions (Bavaria, Baden-Württemberg, Hessen), these delegations have a parliamentary department to represent the specific interests of the parliament.

At regional level, all parliaments have committees which are responsible for (*inter alia* or exclusively) EU Affairs. The federal government's obligation to forward all EU documents to the BR, i.e. *de facto* to the regional governments, was formalised in 1993 (EUZBBG and EUZBLG). This practice made regional parliaments familiar with EU decision-making and allowed them to build up significant in-house expertise over the years. All parliaments have administrative staff specialising in EU matters, either working at the parliament's general secretariat, or in a specialised department, or in the administration of the relevant committee.

Given the experience that the regional governments and parliaments have on EU matters, the tendency is to rely on existing structures and resources, until they prove insufficient to fulfil EWS requirements. Results from the survey show that only the parliament of Schleswig-Holstein has decided to recruit new staff to

work solely on subsidiarity and the EWS (part-time). Saarland and Schleswig-Holstein said that the workload involved in processing the influx of documents on EU affairs was stretching their in-house capacities to the limit. However, due to financial constraints it had not been possible to increase the number of staff.

Regarding training and updating knowledge on subsidiarity checks, the majority of regional parliaments reported that minor in-house adjustments had been made. Most regional parliaments had made sure that the staff was updated on the new legal framework and requirements – in Saarland the members of the relevant committee had also been updated. With the exception of Bavaria and North Rhine-Westphalia where the system was deemed to be fully operational, the subsidiarity check was still at the very early stages of implementation and the adjustments that would be required – both in terms of procedures and resources – had not yet been determined.

Some regions were considering appointing a special envoy of the parliament, either at the representative office of the region in Brussels (Bremen), or as an independent representation of the Land parliament (North Rhine-Westphalia). Bavaria, Baden-Württemberg and Hessen already had existing representations of their parliaments in Brussels. Other regional parliaments did not have their own representation to the EU institutions and relied on the representation of the Land as a whole.

Finally, the services provided by the "observer of the Länder" (Länderbeobachter)<sup>20</sup> could be used as part of the subsidiarity scrutiny process, at a later stage of the EU legislative process.

Together, the German regions established, through an agreement made in 1988 (subsequently amended in 1996), an institution called the "observer of the Länder" (Länderbeobachter)<sup>21</sup>. The observer's key tasks are to assist the federal government delegation at all meetings of the Council and its various bodies (as well as federal government delegates to comitology committees) and to report back to the regions. The "observer of the Länder" is thus a guardian of regional

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<sup>20</sup> <http://www.laenderbeobachter.de/>.

<sup>21</sup> <http://www.laenderbeobachter.de/>.

rights and interests who should oversee issues of regional concern in EU decision-making, and ensure that regional interests are taken into consideration by the federal government during negotiations. The "observer of the Länder" can issue a warning during the EU-legislative process that an EU measure could infringe upon the subsidiarity principle. These potential infringements which are flagged up by the observer could later prompt regions to bring a case for annulment before the CJEU, once the measure is adopted. A case like this would require an appropriate decision to be taken by the BR.

### **Cooperation with other national/regional parliaments**

Except for information pooling via IPEX, there are no other formal forms of cooperation and information exchange between the BT and the BR and the parliaments of other EU Member States. Traditionally, the BR has close ties with the French Senate (informal cooperation and exchange of information), and the BT cooperates more closely with the assemblies of the Weimar triangle countries (France and Poland). These contacts are neither institutionalised nor formalised.

The regions, represented by their governments, cooperate regularly with each other in the BR. Aside from the BR, regional governments work together and exchange information and practices through the intergovernmental conference of Minister-Presidents (Ministerpräsidentenkonferenz). At the moment there is no formal or informal platform for cooperation among the regional parliaments. There is also no overall consensus on the need for closer cooperation among the regional parliaments. Baden-Württemberg suggested developing a structure, or a mechanism, to facilitate the exchange and coordination of information on subsidiarity scrutiny. Other regions did not mention this need at the federal level, nor did they explain whether the framework provided by the BR – to which only regional governments and not parliaments have access – is sufficient. Instead, they said that there should be better coordination between regional parliaments across the EU and suggest that a central database should be set up for their opinions on subsidiarity which could be managed, for example, by the CoR.

Some level of exchange (also at the executive level) takes place through the conference of regional-level EU ministers (Europaministerkonferenz), which acts as a permanent working group of the conference of Minister-Presidents (Ministerpräsidentenkonferenz). There are also a number of informal, *ad hoc* contacts between regions, which take place on the initiative of the regions involved.

At European level, formally speaking all regional parliaments are members of CALRE, but the extent to which they participate varies from one region to another. Some regions also take part in the CoR's SMN. Overall, even the parliaments that are currently not active in these organisations/networks expressed a wish to receive feedback and information on subsidiarity. However, Saarland said that it did not participate in the networks mentioned above due to the small size of its parliament and its limited capacities, and did not wish to receive additional information from these networks concerning subsidiarity either. According to the chair of the EU committee from the parliament of Saarland, cooperation and coordination between the regions in Germany, coupled with the support given by Saarland's representative office in Brussels, were sufficient to maintain a reasonable level of efficiency and information. Extending its networks and relying on yet more sources of information would only lead to confusion and information overload.

### **Visibility/access to the results of the subsidiarity analyses**

At federal level, all BT and BR documents, decisions, minutes and records are publicly accessible via websites, parliamentary gazettes or through the official journal. The respondents to the questionnaire representing both the BT and the BR said that procedures for subsidiarity scrutiny were transparent, visible and accessible enough to the wider public.

At regional level, there was broad agreement that the subsidiarity check was part of the regular political decision-making process and was subject to the same requirements and procedures. It was therefore sufficiently transparent and accessible.

Regional parliaments followed their internal rules on public access to plenary sessions, committee sessions and access to official documents. As regards the disclosure of information, the subsidiarity check was subject to the same rules as the regular parliamentary procedure. Regional parliaments often said that they had online databases of parliamentary documentation.

There were doubts as to whether the procedure in the BR ensured that the individual opinions of the regions were made sufficiently clear to the EU institutions. If the BR adopted an opinion that was different to the opinion of a particular Land, there was no formal procedure for that Land to bring its position forward for consideration by the EU institutions under the EWS.

## **Cooperation between the Bundesrat and the regional parliaments**

### **Transmission of EU draft legislative acts**

The relevant department of the BR secretariat is in charge of transmitting all EU-related documents to the regional governments. According to Protocol No.1 on the Role of National Parliaments in the European Union, the BR receives all legislative proposals regardless of which institution is its author (Art. 2) and all documents of the Council (Art. 5). By virtue of EUZBLG, all these documents are made available to regional governments. Documents are forwarded immediately (they are not filtered) when they arrive from the EU source. The regional governments are responsible for forwarding the documents to their parliaments. There is no direct link between the BR and the regional parliaments.

No specific new procedure for document transfer has been set up for subsidiarity scrutiny. The federal government has had to forward all EU documents to the BT and BR since 1993. In addition, the European Commission has had to forward all new proposals and consultation papers to EU national parliaments<sup>22</sup> since 2006. This initiative was prompted by the Barroso Commission's pursuit of transparency and good cooperation with Member States and their parliaments.

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<sup>22</sup> COM(2006) 211, Communication from the Commission to the European Council on A citizens' agenda - Delivering results for Europe.

The 2006 initiative was a voluntary Commission effort that occurred before the Lisbon Treaty was ratified. The EC decided to continue the transmission of documents in addition to the information obligations set out in the Lisbon Treaty (Protocols No. 1 and 2).

Regional parliaments receive information on EU matters and documents relating to EU legislative proposals from the regional governments. In most cases this cooperation is formally set out in inter-institutional agreements or information rights acts at regional level.

### **Time limit for expressing regional opinion(s)**

Given that the BR brings together regional government representatives (and not regional parliament representatives), it is the responsibility of regional governments to provide sufficient time for their parliaments to express an opinion. Each Land has its own system of cooperation between the government and the parliament. Decisions made at regional level feed into the federal level through the BR, and the regions themselves must make sure that their procedures fit into the time frame set out in Protocol No. 2 on the Application of the principles of Subsidiarity and Proportionality.

The time limit varies depending on the size and workload of the regional parliament. There are regions that have no fixed deadlines for the regional parliament to carry out the subsidiarity scrutiny process and the procedure is incorporated into the routine flow of parliamentary work (this applies to the majority of regions); other regions have agreed on fixed deadlines for the completion of the various stages of subsidiarity scrutiny process (Bavaria, Baden-Württemberg<sup>23</sup>).

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<sup>23</sup> The governments of Bavaria and Baden-Württemberg have a maximum of two weeks from the moment that an EU proposal is transmitted to them to present all relevant documents and subsidiarity analyses to their parliaments for scrutiny.

## **Taking the regional opinion(s) into account**

The BR takes decisions by a majority of votes cast, where individual regions are not allowed to split votes. There is no requirement for a minimum number of regions for a motion to pass. Opinions of dissenting regions are not considered, but if a formal vote has taken place, a minimum of two regions may request that the vote be taken again. EU law offers no solution to a Land parliament in the event of its position having been overridden by the BR, or not (sufficiently) considered by its own government. Regional authorities, whether governments or parliaments, have no standing before the CJEU in general. Only the BR, as a federal level institution with legislative competences, can apply to the CJEU, represented by the federal government of Germany, on the grounds of an infringement of subsidiarity. Regional authorities may opt to take action for annulment through the Committee of the Regions.

## **Differing points of view at national and regional levels**

The BR and BT deliver their opinion on subsidiarity independently from one another. This means that the regions are not affected by the opinion of the BT, they merely need to find a common position among themselves in the BR.

## **Follow-up/feedback from the national Parliament**

All decisions of the BR, including subsidiarity decisions, are passed on to the regional parliaments by their respective governments. Official documentation from the BR secretariat is forwarded automatically to the regional governments. Regional governments inform their parliaments in line with internal provisions.

The BT's decisions are also passed on to BR as a matter of good practice. These are again forwarded to the regional governments and through them find their way to the regional parliaments. The sole purpose of this exchange is information. However, while the exchange between the BT and BR is voluntary, once a document has entered the BR secretariat, the BR is obliged to forward it to the regional governments, which then pass it on to their parliaments.

## **Does closer cooperation need to be developed?**

Most respondents to the questionnaire find that timely information and an efficient exchange of opinions are absolutely essential for safeguarding the proper functioning of the mechanism as a whole. The parliaments of Bavaria and Baden-Württemberg have signalled that they are aware of the annual work programme of the European Commission, and from that source they are able to anticipate which future EU legislative proposals would warrant a subsidiarity scrutiny.

Ways of reinforcing the exchange of information and cooperation outside the procedure in the BR are being considered by some regions (Bavaria, North Rhine Westphalia, Bremen and Hessen).



Synoptic table: The enforcement of the Early Warning System in Germany

	National level		Regional level
Procedures followed by Bundestag, Bundesrat and the regional parliaments			
	Bundestag	Bundesrat	Regional parliaments (Landtage)
Subsidiarity scrutiny procedures	Yes	Yes	Yes, feeding into the BR via regional governments
Human resources and capacity building	No adjustments, reliance on existing Referat P1	No adjustments, reliance on existing resources for the moment	Various responses: no adjustments for the moment whilst awaiting first results, which should reveal needs for adjustments in-house training new personnel representation office in Brussels
Filtering procedure	No	No	No
Cooperation with other national/regional Parliaments	Informally within the Weimar triangle, otherwise through IPEX	Informally with the French Senate	Various responses: ad hoc contacts with selected regional parliaments in Germany and abroad cooperation through CALRE cooperation through SMN no significant or really sporadic cooperation
Visibility/access to the results of the subsidiarity analysis	Sufficient	Sufficient	Sufficient overall

Cooperation between the Bundestag, Bundesrat and the regional parliaments			
	Bundestag	Bundesrat	Landtage
Transmission of EU draft legislative acts	Automatic procedure acc. to Art. 4 of Protocol No. 2	Automatic procedure acc. to Art. 4 of Protocol No. 2	Automatic procedure from BR secretariat to the regional executives, then to regional parliaments according to regional provisions
Time limit for expressing regional opinion(s)	8 weeks according to Treaty	8 weeks according to Treaty	Various responses: fixed time limits for delivering an opinion no fixed limits for delivering an opinion, as long as there is enough time to transfer opinion to BR no fixed limits for delivering an opinion as long as there is enough time to transfer opinion to BR, but efficiency and timeliness required by law
Taking the regional opinion(s) into account	-	Regions represented by their governments	Option for regional parliaments to give an opinion on an EU legislative proposal, not legally binding upon regional governments
Differing points of view at national and regional levels	Independent decision by simple majority	Independent decision by simple majority	Independent decisions by every regional parliament, their weight in the BR

			depends a) on the position of the regional government and b) on the formation of majority in the BR
Follow up/feedback from the respective body	Automatic information to BR	Automatic information to BT and regional governments	Information from BT and BR transferred through the regional governments
Does closer cooperation need to be developed?	Existing system deemed sufficient	Existing system deemed sufficient	Various replies: need to develop further frameworks of cooperation need to develop better channels of informal coordination no need to develop new structures, but exchange of information always welcome

## ***2.2. Regionalised States***

### **2.2.1. Italy**

#### **General background**

In accordance with the Constitution of the Italian Republic, the Italian Parliament is bicameral, made up of two Assemblies: the Chamber of Deputies and the Senate of the Republic, each with equal powers. Members of Parliament are elected every five years by all citizens aged 18 or over for election to the Chamber, and by those aged 25 or over for election to the Senate, respectively.

For administrative purposes, the country is divided into 20 regions and two autonomous provinces. The five special status regions (*regioni a statuto speciale*) of Valle d'Aosta, Friuli Venezia Giulia, Sardinia, Sicily and Trentino-Alto Adige are autonomous and semi-autonomous due to their particular ethnic or geographical considerations. For this reason they have special powers granted under the constitution and regional assemblies (similar to parliaments) and a wide range of administrative and economic powers. Italy's other 15 regions have little autonomy. The legislative power of the regions is based on the Title V of the Italian Constitution, subject to a Constitutional Reform in 2001. This reform considered the need to establish a means to participate in the EU processes. According to the amended Article 117<sup>24</sup>, the legislative power belongs to the state and the regions. Regional organs, which can ensure such legislative participation, are the regional Council (legislative body), the regional cabinet (executive authority) and its presidents. In 2005 the national law 11/2005 revised the Italian process allowing State and Regions to take part in the preparatory phase of the EU legislative decision-making process.

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<sup>24</sup> According to Article 117, Paragraph 5 of the Italian Constitution, the regions and autonomous provinces also provide for the implementation and execution of international obligations and the acts of the European Union pursuant to the procedure established by state law. State law also establishes procedures for the state to act in the place of the regions if they should fail to fulfil their responsibilities in this respect.

But the legislative adjustment to the Treaty of Lisbon is still pending: the XIV parliamentary committee for European Affairs recently drew up a consolidated draft of the future law, expected to be approved in early 2011. The legislative reform proposals aim to align the Italian legislative and institutional framework with the new Lisbon Treaty. One of the biggest challenges is setting up specific instruments and procedures to achieve effective coordination and collaboration between the different levels of governance and, more specifically, implementing the EWS.<sup>25</sup>

At the regional level, specific procedures and mechanisms have been developed to permit an effective subsidiarity scrutiny in accordance with the Lisbon Treaty provisions. For instance, in 2009, before the entry into force of the new Treaty, Emilia-Romagna adopted Regional Law 16/2008, Article 7 of which refers to the monitoring of the subsidiarity principle regarding European proposals affecting regional competences. According to this law, the regional legislative assembly shall be in charge of the subsidiarity check.<sup>26</sup> Sardinia also recently adopted the new Regional Law 13/2010 providing a specific procedure for the subsidiarity analysis of EU draft legislative proposals (Articles 4 and 5).

## **Procedures followed by the Parliament at the national level**

### **Subsidiarity scrutiny procedures**

Law 96/2010<sup>27</sup>, adopted on 4 June 2010, can be considered as the first governing implementation of the EWS. Nevertheless, it does not refer to a specific and detailed subsidiarity scrutiny procedure involving both chambers of the national Parliament. Its provisions impose a duty on the Italian Government (in particular on the Ministry for European affairs) to inform the national Parliament about EU legislative proposals. When the parliamentary analysis begins, the government must provide adequate information to both chambers within three weeks. It must include a general evaluation of the EU draft acts highlighting all the important aspects of national interest by conducting a comparative analysis of the proposal

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<sup>25</sup> The different legislative proposals under discussion within the Italian Parliament are focusing on that issue. See in particular Point 1 of Proposal n° 2854 of Deputy Buttiglione.

<sup>26</sup> See Article 7 of Law 16/2008.

<sup>27</sup> See the *Legge Comunitaria annuale* of 2009. It is an annual law providing a state of play of the implementation of EU legislation in Italy.

and national law.<sup>28</sup> It should also refer to the analysis of any impact on regional and local competences. At present, we can only refer to the provisional procedures approved by the Bureau of the Congress and of the Senate on 6 October 2009 and 14 July 2010. The amended Law 11/2005, not yet approved, only refers to the possibility for the Presidents of the Regional assemblies and Autonomous Provinces to present observations (in good time) to the National Parliament.

### **The Chamber of Deputies**

According to the general provision of L. 11/2005 regarding participation in the EU decision-making process, the President of the Government and the Ministry for the EU affairs must forward all European draft legislative proposals to the Chamber of Deputies. Moreover, Article 127 of the Chamber of Deputies' internal rules of procedure states that, as soon as they have been published in the EU Official Journal, any legislative EU acts (or the drafts), shall be referred for consideration to the relevant sectoral committees, together with the opinion of the XIV parliamentary committee specialising in European affairs (the competent committee for subsidiarity analysis)<sup>29</sup>. The analysis is forwarded directly to the sectoral committees and to the President of the Chamber, who is also responsible for sending the final decision (expressing a negative position) to the EU institutions. The Chamber of Deputies' internal rules of procedure (both the previous rules and the current provisional rules) do not take the position of the regional assemblies into consideration.

### **The Senate**

A provisional procedure is currently being applied as regards the EWS. When the Senate receives EU draft legislative proposals from the national Government, the proposals are assigned to particular commissions. A specific position is then drafted based on the opinion of the XIV Committee for EU affairs. It is made up of two parts: one concerning the merit of the EU draft

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<sup>28</sup> See in particular Article 9 of L. 96/2010 reforming Law 11/2005.

<sup>29</sup> With a view to adapting to the Lisbon treaty, a provisional procedure for the subsidiarity principle has already been established, but it will be subject to a future revision of the internal rules of procedure of the chamber. At present, the XIV parliamentary committee not only has the duty to provide an opinion (as provided by the previous internal rules of procedure), but also a subsidiarity check.

legislative proposal and the other addressing compliance with the subsidiarity and proportionality principles. The Italian Senate's internal rules of procedure do not yet provide for consultation of the regional assemblies.

### **Cooperation between Chambers**

At present, there is no cooperation procedure between the Chamber of Deputies and the Senate. They do not necessarily work on the same EU draft legislative proposals. This might change when both chambers revise their respective rules of procedure. The main role is now assumed by the XIV parliamentary committees for EU affairs.

### **Italian regional parliaments**

To date, some Italian regions have made provision for a specific subsidiarity scrutiny procedure, ahead of the process at national level. As explained earlier, this is the case for Sardinia (Regional Law 13/2010), Emilia-Romagna (Regional Law 16/2008 and resolution n. 512/2010, Tuscany (R.L. 26/2009) and Marche (R.L. 14/2006) for example. With regard to other regions, such as Abruzzo, the regional law will be amended to establish an ad hoc procedure for the subsidiarity check. However, in most cases, the provisions only cover participation in European activities, implementing Article 5 of L. 11/2005. In other cases, no specific procedure with regard to subsidiarity checks has been put in place at regional level.

Cooperation with the regional executive is crucial, as a lack of communication could lead to difficulties. In some regions, such as Abruzzo, Calabria, Emilia-Romagna, Sardinia<sup>30</sup> and Sicily, a specific coordination mechanism has already been established by a regional law. In the case of Emilia-Romagna, a specific working group composed of legal experts ensures coordination with the regional executive: important technical elements concerning the subsidiarity scrutiny are included. In general the provision of a coordination mechanism seems to be a valid tool. In other cases (Marche), the coordination mechanism will be studied. And for others, no coordination mechanism between the regional legislative and

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30 See the regional Law of Sardinia. L.R 13/2010 “Disciplina delle attività europee e di rilievo internazionale della regione autonoma della Sardegna e modifiche alla legge regionale del 15 Febbraio 1996 n. 12”.

executive bodies has yet been put in place (Bolzano, Friuli-Venezia Giulia, Lazio, Lombardy, Molise, Piedmont and Tuscany).

### **Filtering procedure**

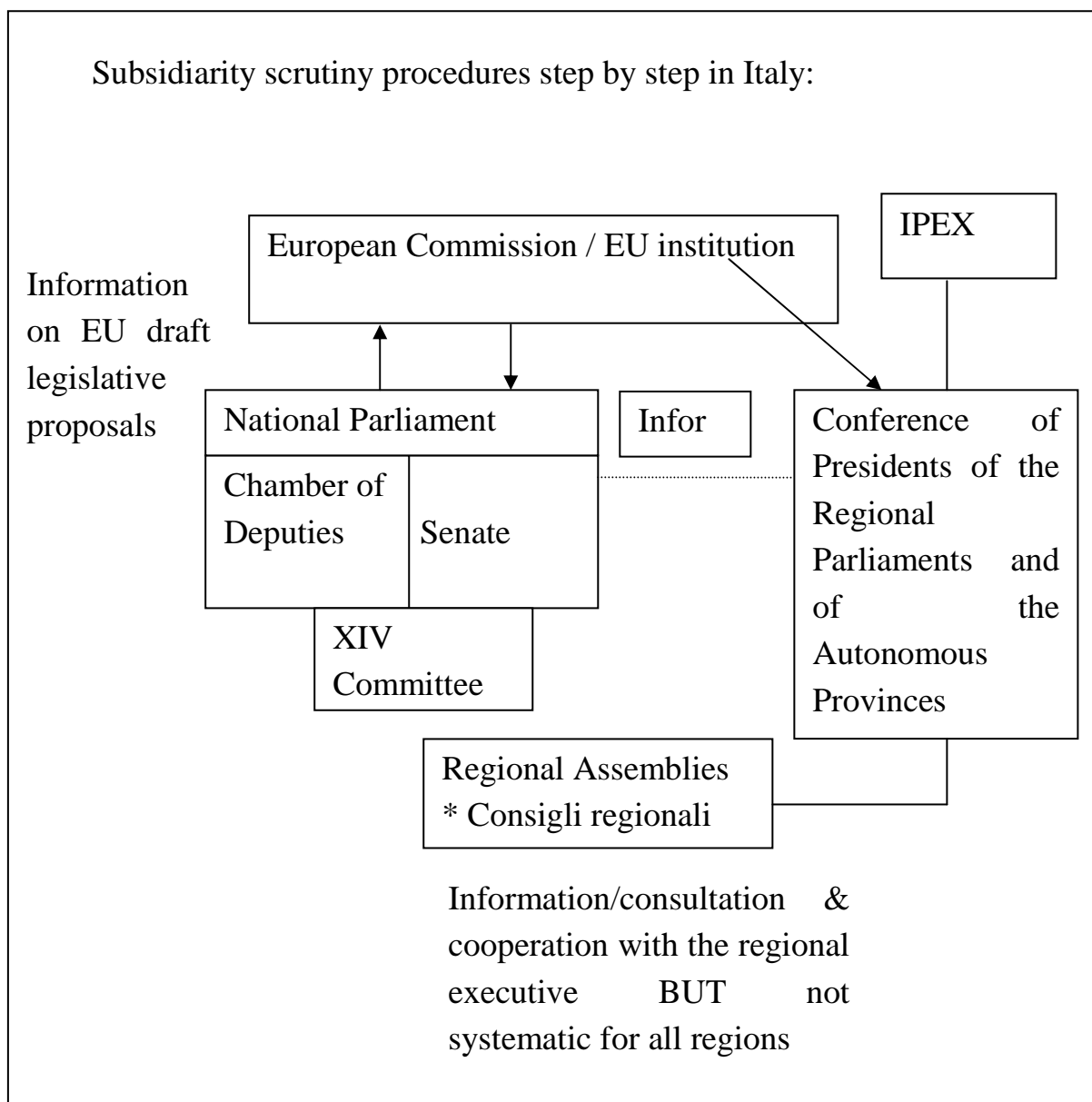
The Italian regional parliaments are not yet formally involved in the EWS procedure. The filtering procedure will depend on revision of the internal rules of procedure of both chambers. According to Law 11/2005 and on the basis of the Italian Constitution, the government forwards EU legislative acts to the regional assemblies through the Conference of the President of the Regional Assemblies and of the Autonomous Provinces. The national department for European policies acts as a first filter for EU proposals. Regional assemblies can present their observations, but it is not mandatory for the national parliament and the government to take them into consideration.

At regional level, Emilia-Romagna introduced a specific mechanism in 2008 that can be considered as a “political filter” in order to find out which EU proposals affect regional interests and the subsidiarity principle. Emilia Romagna's Regional Law 16/2008 introduced a special annual general meeting on European affairs in order to scrutinise the European Commission's programme. This produces a kind of preliminary analysis of the documents to be sent later by the Italian Government<sup>31</sup>. In the case of Sardinia, the Study Service of the Regional Council (*Servizio Studi del Consiglio Regionale*) sends all EU legislative acts involving regional interests to the various permanent commissions. In the Marche region, the filtering procedure is carried out by the committee responsible for subsidiarity (Committee for EU Affairs), on the basis of the various issues related to the European proposals and in line with the competences attributed by Article 117 of the Italian Constitution. In other regions, there is no provision for a filtering procedure, but in the future it would be the responsibility of the committee for European affairs (Calabria and Piedmont).

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31 On 7 October 2010 the last joint session was held in Emilia-Romagna, Resolution 512/2010.





## Human resources and capacity building

The lack of human resources and specific structures is always considered challenging at both national and regional level.

The new perspectives introduced by the Lisbon Treaty will certainly increase the volume of work of the committee working on European affairs in the regional assemblies, as well as increasing their expertise. This would be in line with the wishes of certain regions that committees dealing with European affairs in the regional assemblies should play a more important role. For instance, Sardinia is

considering giving the parliamentary committee for European affairs a more important role.

Nevertheless, human resources are considered to be the most critical point, particularly given the strict eight-week time limit imposed by the Lisbon Treaty. Analysing European draft legislative proposals, and in particular the large quantity of such documents, can create difficulties for the regional administrations as they are not always in a position to take on this role, even if it were considered essential (Bolzano). Some Italian regions have prepared themselves individually or with the support of different structures for their new tasks deriving from the EWS. For example, the Emilia-Romagna Regional Assembly has made its preparations mainly with the help of the Committee of the Regions' Subsidiarity Monitoring Network and has set up a specific committee for subsidiarity analysis: the Commission of the Assembly (Regional Law 16/2008–Article 7). In general, all of the committees for European affairs will be reinforced, as underlined by the Friuli-Venezia Giulia Region: the 5th Commission<sup>32</sup> of the Regional Assembly will be involved in scrutinising subsidiarity. In Sardinia, the procedure is provided for by Regional Law 13/2010 (Regional Law of 30 June 2010 n.131– Article 5): it is the Permanent Committee for European Affairs that has the main responsibility for subsidiarity<sup>33</sup>. In most cases, the rules of procedure of the regional assembly will have to be amended and this will have organisational consequences (Sardinia, Sicily - Regional Law 10/2010 – Article 2.4.).

The Emilia-Romagna region underlined the fact that, at present, insufficient financial resources means that there is no dedicated structure for implementing the subsidiarity principle<sup>34</sup>. The Marche Region has made a specific suggestion: automatic forwarding of all EWS matters to the regional assemblies would be useful for allowing EU proposals to be forwarded directly to the regional level. Every region highlighted the need for closer cooperation, because it creates a more democratic European society. However, such cooperation should be structured and organised (Molise).

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<sup>32</sup> The 5<sup>th</sup> Commission of the Regional Council for the Friuli-Venezia Giulia is a permanent commission and has competence for matters linked to the European Union, and more specifically the EWS.

<sup>33</sup> Commissione permanente per le politiche comunitarie. Disegno di Legge n.13 of 2010.

<sup>34</sup> The regional assembly of Emilia-Romagna is involved particularly with its Commission I (*potere deliberante*).

Another important point is the support provided by the CIACE (*Comitato interministeriale per gli Affari Comunitari Europei*)<sup>35</sup>. More specifically, technical documentation drafted by this committee can be attached to the EU legislative proposals transmitted by the Italian Government. A contribution of this kind allows better information to be provided. This committee will be reshaped and improved and will be called the Inter-Ministerial Committee for European Affairs.

### **Cooperation with other national/regional parliaments**

There is no established procedure for cooperation with other national parliaments within the framework of the EWS. At present, coordination and collaboration is carried out through the CIACE<sup>36</sup>, the committee responsible for providing and promoting the governmental guidelines shaping the Italian position in the EU legislative process; the *Conferenza dei presidenti delle Assemblee legislative e delle provincie autonome*<sup>37</sup> (Conference of Presidents of the Regional Assemblies and of the Autonomous Provinces); and the *Conferenza Stato Regioni* (Conference State-Regions) is the permanent conference dealing with the relationship between the state and the regions.<sup>38</sup>

The “Conference of Presidents of the Legislative Assemblies of the Regions and the Autonomous Provinces” ensures coordination on all European issues. A working group composed of civil servants specialised in European affairs was established in 2009 to consider all EU-related issues. It is responsible for identifying EU draft legislative proposals of particular concern for the Italian regions, flagging best practices and ensuring the exchange of information. All in all, it favours coordination at the regional level.

Emilia-Romagna applies Resolution 512/2010, whereby its regional parliament is in charge of transmitting the final reports on EU acts and proposals to the other regional legislative parliaments, the national parliament, the European

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<sup>35</sup> <http://www.politichecomunitarie.it/attivita/?c=ciace>.

<sup>36</sup> See the website of CIACE - the Governmental Department of Communitarian and European policies: <http://www.politichecomunitarie.it/struttura/37/ciace>. The reform of the L. 11/2005 refers to CUE, the inter-ministerial Committee for the EU affairs: this is the new denomination.

<sup>37</sup> <http://www.parlamentiregionali.it/>.

<sup>38</sup> <http://www.statoregioni.it/>.

Parliament and the Committee of the Regions. Yet the position of the Emilia-Romagna Region emphasises that cooperation at an informal level based on the IPEX model could be useful, thereby permitting cooperation between the regional parliaments with legislative powers in the different Member States. Indeed, it would be useful for comparing common needs and problems at the regional level in the EU and for identifying best practices, encouraging regional parliaments/assemblies with legislative powers to be involved in the EU legislative process. Closer cooperation with other regional parliaments would also enable regional and local interests to be represented in the national parliament and the European Institutions. Moreover, the majority of the Italian regional assemblies which replied to the questionnaire participate actively in the meetings organised by CALRE and REGLEG. The Emilia-Romagna, Friuli-Venezia Giulia and Marche regions suggested that it would be useful to provide a cooperation mechanism cooperation between regional parliaments, such as the one provided for the national parliaments (IPEX).

### **Visibility/access to the results of the subsidiarity analysis**

The results of the subsidiarity analysis are not sufficiently visible on the whole. More transparency and easier access to that information will be ensured when the internal rules of procedure of the national chambers are applied. Parliamentary committees in general only approve the proposals which are later published on the internet. The procedure for drafting the final decision is not easy to follow.

Even if it is not possible at present to talk about subsidiarity scrutiny procedures as such, transparency and public access to the results of the subsidiarity analysis would be mainly provided through the regional parliament's website (Calabria, Emilia-Romagna, Friuli-Venezia Giulia and Piedmont). In other regions, the results of the subsidiarity analysis are part of the resolution published in the Official Journal of the region as well as the regional assembly's website (Emilia-Romagna<sup>39</sup>). In the case of Sardinia, Regional Law 13/2010 provided a higher profile for subsidiarity analysis involving, for example, the local authorities. In

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<sup>39</sup> See detailed answer 16 of the questionnaire Emilia-Romagna. See the following link able to ensure visibility and access to the results of the subsidiarity analysis: <http://assemblealegislativa.regione.emilia-romagna.it/wcm/al/comm/I/index.htm>.

some other cases, there is insufficient visibility and access to this information (Bolzano).

## **Cooperation between the national parliament and the regional parliaments**

### **Transmission of the EU draft legislative acts**

According to Article 5 of L. 11/2005, regulating general participation in the EU decision-making process, all EU legislative proposals are transmitted by the Italian Government to the Conference of Presidents of the Regional Assemblies and the Presidents of the autonomous provinces. All the regional opinions are sent to the Italian President of the Government or to the Ministry for EU affairs through the same conference. Where the regional competence is involved, the government has a duty to consult the conference (Article 5. 4 of the same law).

### **Time limit for expressing regional opinion(s)**

There is currently no time limit for expressing the regional position on subsidiarity within the EWS framework. The whole procedure, including the time limit for expressing regional opinions, will be defined after amending Law 11/2005 enters into force and is implemented at regional level.

### **Taking the regional opinion(s) into account**

At present, the most efficient way of taking the regional position(s) into consideration by the Italian parliament is the “Conference of Presidents of the Legislative Assemblies of the Regions and the Autonomous Provinces” and its abovementioned working group established in 2009. The conference represents a means of coordination and favours the regional assemblies' involvement in the EU legislative process. This is of utmost importance as it counterbalances the lack of a duty to consider the regional position, or to provide a reasoned opinion in the event of their position(s) not being followed or considered by the national parliament in the final decision sent to the EU institutions.

## **Differing points of view at national and regional levels**

No specific procedure has yet been established. Moreover, the national parliament is not obliged to consider the different positions of the regional assemblies or to promote the search for a common position, as there is no legal duty to involve them.

## **Follow-up/feedback from the national Parliament**

The national parliament informs regional parliaments on the final position/decision. On the other hand, it has no legal duty to do so, even in the event of the regional assemblies' positions not being considered.

## **Does closer cooperation need to be developed?**

Closer cooperation is seen, especially by the Italian regional assemblies, as the crucial point to be developed within the EWS framework and subsidiarity monitoring, from which positive aspects and contributions should evolve. Taking account of regional interests, finding a common position at regional and national levels, exchanging information and best practices and discussing these are viewed as the cornerstones for building a proactive approach with regard to participation in the European legislative process, whilst maintaining a balance among the different interests involved. Criteria are needed for defining such cooperation (Sardinia).

Synoptic table: The enforcement of the Early Warning System in Italy

	National level		Regional level
Procedures followed by the national Parliament and the regional Parliaments			
	Chamber of Deputies	Senate	
Subsidiarity scrutiny procedures	The amendment to L. 11/2005 will implement the EWS. At present, we are referring to the L. 11/2005 regulating the participation of the regional assemblies in the EU legislative process	-	Sardinia (Regional Law 13/2010), Emilia Romagna (Regional Law 16/2008 and resolution n. 512/2010), Calabria (R.L. n.3/2007), Sicily (R.L. 10/2010), Abruzzo (R.L. 22/2009), Tuscany (R.L. 26/2009), Marche (R.L. 14/2006)
Filtering procedures	Not established	-	-
Human resources and capacity building	-	-	Not enough. More effective structure needed
Cooperation with other national/regional Parliaments	-	-	Conference of Presidents of the Legislative Assemblies of the Regions and the Autonomous Provinces. Conference State-Regions.
Visibility/access to the results of the subsidiarity analysis	-	-	Improved by the current use of websites

Cooperation between the national Parliament and regional Parliaments			
	Chamber of Deputies	Senate	Not yet developed, it could be useful
Transmission of EU draft legislative acts	-	-	To the Conference of Presidents and later presented to the government
Time limit for expressing regional opinion(s)	-	-	
Taking the regional opinion(s) into account	Not established	-	-
Differing points of view at national and regional levels	Not established	-	Considered, but there is not a specific duty established by law
Follow-up/feedback from the national Parliament	-	-	Yes, it exists, but it should be improved
Does closer cooperation needed to be developed?	-	-	Yes, extremely important



## 2.2.2. Spain

### General background

At the national level, Spain elects a legislature, the Spanish Parliament (Cortes Generales), which comprises two chambers: the Congress of Deputies (Congreso de los Diputados) is the lower house and the Senate (Senado) is the upper house. The Congress has 350 deputies, directly elected by universal suffrage for four years, elected from each province, and allocated per province and size of population. The senate relies on an election system that has been unchanged since 1977. Senators are elected partly directly (four senators per province as a general rule) and partly appointed (by the legislative assemblies of the autonomous communities – two for each community and another one for every million inhabitants in the territory). Although the senate was conceived as a territorial upper house, it has been argued that it does not fulfil such a task. Proposals to reform the senate as of November 2010 have been discussed for at least fourteen years.

When Spain joined the European Communities, its national parliament's involvement in European affairs was governed by a basic law (Law 47/1985) which created the “Joint Committee for the European Communities” (*Comisión Mixta para las Comunidades Europeas*). Its name was changed with the Treaty of the European Union in 1993, (by law 8/94) into the “Joint Committee for the European Union” (*Comisión Mixta para la Unión Europea*). Law 8/94 has been recently amended, to align it with the new Lisbon Treaty: Law 24/2009, and Law 38/2010,

The Joint Committee for the European Union guarantees appropriate involvement of the national parliament in preparing EU legislation. It has control functions over the parliament and is composed of deputies and senators, since all parliamentary groups are represented in the committee. It usually meets two or three times a month during the session period, but with an irregular frequency, either via the plenary or the bureau (presidency, vice-presidencies and secretaries) with the spokespersons and deputy spokespersons.

Law 47/85	Law 8/94	Law 24/2009 amended by Law 38/2010
Joint Committee for the European Communities	Joint Committee for the European Union	Joint Committee for the European Union with responsibility for the EWS

Through the adoption of Law 24/2009 of 22 December 2009, further developed by the Resolution of the Bureau of the Congress of Deputies and the Senate adopted on 27 May 2010, the role of the Joint Committee has been aligned with the new Lisbon Treaty's provisions, and in particular to Protocol n° 2.

### **Procedures followed at the national/regional levels**

#### **Subsidiarity scrutiny procedures**

The Joint Committee for the European Union competencies responsible for subsidiarity scrutiny, since it is responsible for preparing and approving – on behalf of the general courts – the reasoned opinion in cases of breaches of the subsidiarity principle. Nevertheless, the plenary of the chambers (both) can force the reasoned opinion of the Joint Committee to be submitted to the plenary for debate and voting.

The presidents of both chambers are responsible for sending the reasoned opinion, once approved, to the European Institutions within the established term of eight weeks. When necessary, the Joint Committee can ask the government to provide a report of compliance with the principle of subsidiarity of a given European Commission (or other) proposal. In that case, the government has two weeks to provide the report, accompanied by the necessary documentation. The Joint Committee can also ask the government to appeal to the Court of Justice of the EU in the event of a breach of the subsidiarity principle.

Article 6 of the Law 24/2009, establishes the national parliament's duty to transmit any EU draft legislative act to regional parliaments, without any filtering procedure. When the Spanish parliament receives a Commission initiative without the information specifying that it concerns a legislative act, the initiative is included in the database as a non-legislative initiative, for which the

scrutiny procedure is not launched, and therefore there is nothing to send to the regional parliaments. Only when, at a second stage, the national parliament receives the communication on the commencement of the eight-week period is the initiative qualified as a legislative act and sent to the regional parliaments. In any event, the debates do not begin before the bureau and the spokespersons have given their approval.

In Spain there are 17 regional parliaments. It is up to the regional parliaments to decide whether or not to send a reasoned opinion to the national parliament as regards compliance with the subsidiarity principle.

Regional parliaments have four weeks (starting from the date of dispatch by the national parliament to the regional parliament) to send their opinion to the national parliament if they want their statement to be taken into consideration. These four weeks (28 natural days) are counted from the moment the regional parliament receives the European documents from the Spanish Parliament.

According to the results of our interviews, consultations have been conducted with different experts and the parliamentary groups of the autonomous communities to prepare this law. Regional parliaments consider the time frame to be very short, although some of them understand the need to allow sufficient time for the national parliament to consider the regional input. According to the answers received to our questionnaire, we can conclude that there is no regional parliament working on the European documents at an earlier stage, before they are officially dispatched by the national parliament.

Spanish is one of the first translations to be ready, and this accordingly increases the effective amount of time available to prepare a reasoned opinion. But the mechanism of the subsidiarity check as laid down by law is only officially launched once notification is received from the EU institutions, when all the official languages are available and the eight-week period begins to run.

The national parliament can launch the debate on a given initiative before this four-week period. However, in line with parliamentary practice, the bureau and the spokespersons are always aware of the four-week deadline for including the necessary debate in the Joint Committee discussions. Once the four-week period has passed, it is not obliged to consider the regional opinions (according to the referred law). Neither is it obliged to respond to or comment on the regional opinions: this is seen by some autonomous regions (Canary Islands) as a

handicap, since it would be more encouraging to have feedback from the national level on the opinions sent.

Nevertheless, in the opinion of the Canary Islands Government, and in line with existing jurisprudence, since EU Law cannot alter the internal allocation of responsibilities in the areas that fall within the jurisdiction of the Spanish regions, the national parliament has to include regional parliaments' opinions in the reasoned opinion sent to Brussels.

According to the opinion expressed by the national parliament, only if it approves a reasoned opinion on the violation of the subsidiarity principle, will it include a record of the regional parliament's reasoned opinions in the references needed for consultation.

The subsidiarity scrutiny procedures in the Spanish Parliament can be summarised as follows:

The national Parliament<sup>40</sup> receives the European draft legislative proposals, which are transmitted – without any filtering procedure – to the regional parliaments for them to express their position(s) on any possible breach of the subsidiarity principle. They must send an opinion within four weeks if they want it to be taken into consideration. The Spanish Parliament's reasoned opinion is prepared by the Joint Committee for the European Union. The Law does not provide specific criteria for defining how regional parliaments might contribute to the final position to be adopted by the national parliament. According to our interview with the national parliament representative, the fact of receiving an opinion from the regional level may lead to the appointment of a rapporteur for the dossier (if there was no rapporteur already appointed). If a rapporteur has already been appointed when the national parliament receives an opinion from the regional chamber, it will be forwarded to the rapporteur for his/her consideration.

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<sup>40</sup> According to the Law, the *Cortes Generales* will forward the proposals. The Law has been amended by a Resolution of the Parliament (May 2010), which specifies that the Joint Committee, as a body of the *Cortes*, is responsible for forwarding proposals to the regional parliaments. In practice, the Secretariat of the Committee has the task of forwarding the proposals. This secretariat passes on the proposals as soon as they are received from the EU Institutions. If the day they are received is a holiday in Madrid, then they will be forwarded on the following working day. (Telephone conversation with the national parliament, October 2010).

If the Joint Committee for the European Union drafts a reasoned opinion on the breach of the subsidiarity principle, it must include an account of the opinions received from the regional parliament(s), with the references needed for consultation.

There is no obligation to take account of the opinion of the regional parliaments when drafting the national reasoned opinion, although in the case of the regional competences at stake this could be a cause of conflict.

After the Joint Committee has approved the reasoned opinion (and if requested by the plenary of the chambers), it is sent to the relevant EU institutions and to the national government for information.

### **Cooperation between chambers**

The two chambers of the Spanish Parliament, the Congress of Deputies and the Senate, have agreed to work jointly on monitoring the subsidiarity aspect of EU draft legislative acts. The Joint Committee for the European Union has been granted special powers by both chambers to allow joint work on subsidiarity issues.

The work of a Joint Committee of this kind was outlined in a Resolution of the Bureau of the Congress and Senate of 21 September 1995. This resolution has recently been replaced by another dated 27 May 2010, which aligns the functioning of the bureau and the spokespersons of the Joint Committee for the EU (*Mesa y portavoces de la Comisión Mixta para la Unión Europea*) with the new treaty.

### **Spanish regional parliaments**

The subsidiarity scrutiny process has been welcomed by Spanish regional parliaments. The fact that the national parliament has not established any kind of filtering procedure is positive. Nevertheless, according to the pilot studies conducted by COSAC, a few show a level of scepticism in relation to the real impact of this new/Lisbon Treaty: It is up to the national parliament to take account of the input provided by the regional level; it requires much effort and

the effectiveness of that work is not evident. Some parliaments have decided to adopt a position on every proposal (even when giving consent) and it is most likely that the system will need to be revised and rationalised.<sup>41</sup>

In general, the Spanish regional parliaments have reacted positively to the new Lisbon Treaty's provisions on the EWS. However, they have indicated that there is still not enough data available on EWS implementation. The way in which they are involved in subsidiarity scrutiny has not yet been established, due to the recent reform strengthening the role of the Joint Committee for the European Union. Some regional parliaments have delegated the task of scrutinising subsidiarity to the Commission of European Affairs, whilst others are delegating it to sectoral committees.

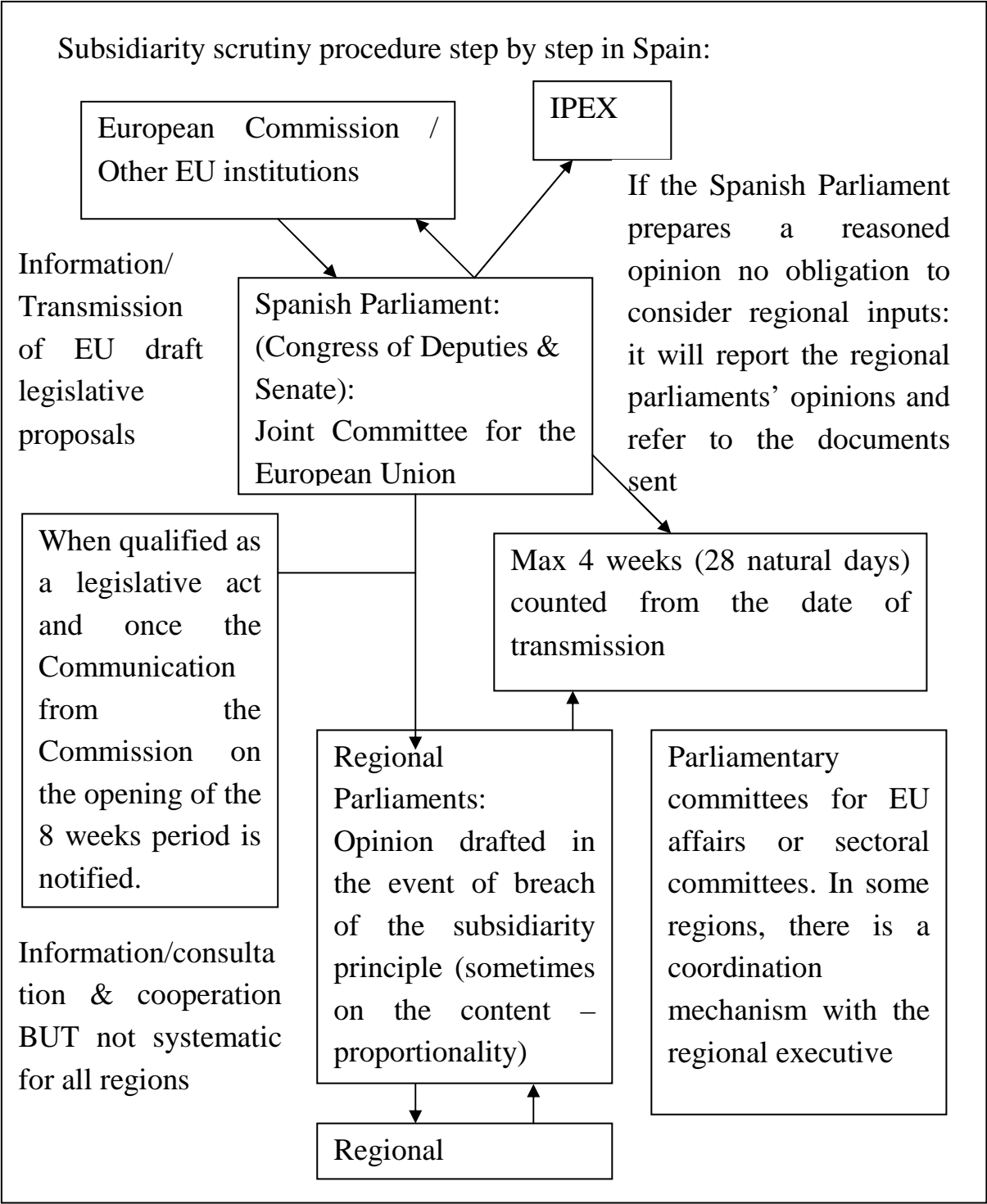
Most of the Spanish regional parliaments that answered our questionnaire conduct subsidiarity checks without having changed their respective rules of procedure (Cantabria), in agreement with the Bureau of the Parliament and the spokesperson (Junta de Portavoces). Some parliaments (for example Galicia) have established specific provisions for the EU affairs committee, which has the task of preparing the analysis on subsidiarity scrutiny as well as taking forward all the relations with the EU institutions, especially the Committee of the Regions, and with the EU representatives in Brussels. Others (for example Catalonia) revise the proposals and distribute them to the relevant sectoral committees for analysis.

As regards the relationship between the regional parliament and the regional executive, it is clear that in some cases there is a good and systematic collaboration between both branches: all the EU draft legislative proposals received by the regional parliament are simultaneously received or immediately transmitted to the regional government (Cantabria, Galicia, La Rioja, Canary Islands). For other regional parliaments, such cooperation with the regional government is not systematic but remains possible (Murcia, Catalonia); or there is an option of consulting the regional government, but it has not been applied to date (Aragon).

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<sup>41</sup> Personal interview with a representative lawyer of the Catalan Parliament, October 2010.

There is no procedure for cooperation among the different regional parliaments when preparing their reasoned opinion.



**Filtering procedures**

No filtering is undertaken by the national parliament at national level. All proposals for a legislative act coming from the EU institutions are transmitted to regional parliaments, and it is up to them to decide whether or not to prepare a reasoned opinion.



According to the answers given to our questionnaire, in general no filtering procedure has been established at the regional level to decide on the relevance of the EU draft legislative acts regarding the regions' competences once they have been transmitted by the national parliament through the Joint Committee for the European Union. However, in some regional parliaments (Galicia, Catalonia, Basque country) an assessment of the EU legislative draft proposals is made by the parliamentary groups, which can be considered as a 'political filter' rather than a technical filter; these parliaments always send a reasoned opinion, even if it is one of compliance. The Madrid region, which has a different system, has sent only one opinion, based on an initiative by its executive, and regarding issues of proportionality. The region of Murcia states in the answers given to our questionnaire that, since the entry into force of the new Treaty and up until November 2010, they have dealt with 31 proposals sent by the national parliament: 28 are already completed, and 3 are still pending. In the Canary Islands, the government (Secretary for the EU) sends the European initiative to the relevant government departments with a request to examine it and make comments within a week. The secretariat then has a further week to prepare a report to be submitted to the specific parliamentary committee in charge of subsidiarity monitoring. Special attention is given to the questions affecting the Islands' special status as an outermost region.

Within this context, some regional parliaments pointed out that a filtering procedure would be necessary to provide better and more organised work, and this is needed at two stages: when receiving the initiatives a pre-selection should be made to filter the important ones. A system should be established in order to work (and prepare an opinion) only on those initiatives where there is a relevant interest.

### **Human resources and capacity building**

No specific measures have been taken at national level to increase human resources for subsidiarity monitoring. The national parliament has not adopted special measures on capacity building for this task.

Some regional parliaments pointed out the lack of specialisation and expertise on EU matters and subsidiarity, as well as the lack of specific structures, administrative support, financial and human resources, which are considered to

be the main problems faced at the regional level (Cantabria, La Rioja and Murcia). Nevertheless, others (Aragon, Catalonia) pointed out the fact that the lawyers of the regional parliaments are civil servants appointed to work on European issues. Since they have to pass a very tough “concours” (competitive examination) to gain such a position, it is assumed that they have sufficient knowledge and understanding of the mechanisms for subsidiarity scrutiny. The regional parliament of Cantabria adapted the work of part of its personnel to reflect the new tasks linked to the EWS; and the regional parliament of Galicia provided specific documents and organised training sessions devoted to this topic.

In general, it is possible to state that the committees for European affairs of the regional parliaments are considered to play an increasingly important role. However, they need adequate resources to properly fulfil this role. The Galician Parliament pointed out in its answers to our questionnaire that the importance of the role to be played by the Committee for European Affairs in subsidiarity scrutiny will depend on how the current situation develops, the EWS framework, as well as the implementation of the latter and its results. In some parliaments (Catalonia for example) the scrutiny procedure is in the hands of both the European affairs committees and the sectoral committees.

### **Cooperation with other national/regional Parliaments**

For the Spanish national parliament the preliminary check starts with the assistance of the permanent representative of the parliament in Brussels. All national parliaments use this channel to remain aware of what is being prepared and discussed in Brussels at a very early stage of the decision-making process. Furthermore, the Spanish Parliament, like the other national parliaments of the EU Member States, participates in COSAC. It also takes part in the Conference of Speakers of the Parliaments of the EU. Inter-parliamentary cooperation is also conducted via the IPEX website.

Since 1983 there has been an annual meeting of the conference of presidents of the Spanish regional assemblies. This meeting was institutionalised in the year 1997 under the name of COPREPA (*Conferencia de Presidentes de*

*Parlamentos autonómicos españoles*)<sup>42</sup>. Participation is of a voluntary nature but it is a useful mechanism for the exchange of information, experiences and common concerns. This structure could be used in the future for coordinating the work of regional parliaments on subsidiarity issues<sup>43</sup>. Moreover, most of the Spanish regional parliaments participate in the meetings and activities of CALRE, as they are considered to be an important network for developing cooperation with the regional parliaments of the other Member States. CALRE activities encouraged some Spanish regional parliaments to be very active at an early stage and better prepared as regards implementing the new EWS and their new tasks (La Rioja).

As regards the executives, the “Conference of regional governments of the Autonomous Communities” is a recent mechanism for institutional cooperation in which all governments have shown interest in the European issues that could affect their areas of responsibility<sup>44</sup>.

### **Visibility/access to the results of the subsidiarity analysis**

At national level, the national parliament considers that subsidiarity scrutiny is sufficiently visible: debates in committees can be followed on television and via the internet, and via the verbatim record of sittings (Diario de sesiones) available on the parliament webpage. At the time of drafting this report, there had not yet been any plenary debate on subsidiarity monitoring. However, certain Spanish regional parliaments do not consider the scrutiny procedure set up at the national level to be transparent enough or accessible to the public. Their role as regional parliaments is in the background, and this might result in low visibility vis-à-vis the European institutions and the other regional and national parliaments. Furthermore, there is no transmission of the national reasoned opinion to the regional parliaments before publication (not even to the regional parliaments

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<sup>42</sup> At the time of drafting this report, the presidency of COPREPA was held by the region of Navarre. They have recently agreed to create an informative platform for all the regional assemblies in order to share information on the legislative proposals and the subsidiarity scrutiny mechanisms. The next COPREPA meeting will be held in spring 2011 in Pamplona (Navarre).

<sup>43</sup> Yet, it is important to envisage the development of such a system on the basis of criteria and a dedicated procedure (for example the definition of meetings concerning the subsidiarity principle). There are also informal mechanisms for sharing information and coordination, through academic forums (example the region of Murcia).

<sup>44</sup> Replies to the questionnaire, government of Canary Islands.

that have sent contributions). In general they find there is a lack of transparency and accessibility for the regional parliaments to the national parliament's documents dealing with subsidiarity analysis. This is perceived as a problem for their effective participation (La Rioja, Murcia).

At regional level, in the opinion of the regional parliaments questioned, there is enough publicity of the regional subsidiarity analysis. The relevant documents are published in the Official Journal of the regional parliament and on their respective websites (Aragon, Galicia). In this way, it is easy to access the various data. On the other hand, citizens' knowledge of subsidiarity monitoring by regional parliaments is non-existent according to some of the answers to our questionnaire. Therefore accessibility has to be considered not only in terms of transparency, but also in terms of the interest shown in the process by the population.

### **Cooperation between the national Parliament and regional Parliaments**

The coordination procedure between the national parliament and the regional parliaments is established by Law 8/1994, as amended by Law 24/2009. This coordination refers only to the transmission of draft legislative proposals and the treatment of the reasoned opinions delivered by the regional parliaments. But there is no coordination procedure regarding interim discussions during preparatory work on the respective reasoned opinions. It seems that all the parliaments (national as well as regional parliaments) work in isolation when it comes to subsidiarity scrutiny.

### **Transmission of EU draft legislative acts**

At the regional level, there are some specific internal procedures for sending EU draft legislative proposals to the parliamentary groups, the relevant commissions/committees, as well as the regional governments (Cantabria).

### **Time limit for expressing regional opinion(s)**

The law gives eight weeks to the national parliament and four weeks (28 natural days) to the regional parliaments to submit their position(s) on subsidiarity to the

national parliament. The four weeks commence at the point at which the EU draft legislative proposals are sent by the national parliament to the different regional assemblies. They are not sent automatically, but, according to the Joint Committee of the European Union, as soon as possible once the proposals are received from the European level, together with the information that it involves a legislative proposal and that the eight-week period has commenced.

The Spanish parliaments' (both at national and at regional levels) work is based on the official commencement of the time period, when the translation into all EU official languages has been completed; no official consideration has been given to the fact that the time limit could be extended by sending either the English version or the Spanish version to the regional parliament before the rest of the languages are available, (although in practice the Joint Committee claims to start its work and reading earlier, but not officially). On the contrary, other assemblies use the translation aspect to their advantage, to gain some extra time with subsidiarity monitoring (see FI, UK, DE).

### **Taking the regional opinion(s) into account**

Only in the case of a reasoned opinion issued by the Joint Committee for the European Union (or the plenary if so requested), will the contribution of the regional parliaments to the subsidiarity analysis be mentioned and accompanied with references to the relevant documents. On the other hand, it is not yet clear how this system could work effectively. The regional parliaments highlighted the lack of criteria for defining the way for adopting a final position at the national level. Some regional parliaments consider the absence of a coordination mechanism to be the main problem when properly considering their interests with regard to EU legislative acts. In practice each region has established specific proceedings in order to provide reports and to express their position.

### **Differing points of view at national and regional levels**

According to the position expressed by the national level (the Joint Committee for the European Union), the Rapporteur (*Ponente*) working on the reasoned opinion will consider the specific position of the regional level. It will also be taken into consideration by the bureau, which holds regular meetings twice a

month. The analysis is made on a case-by-case basis, considering and comparing the different positions, particularly when they are conflicting. In other words, it seems possible to refer to a potential kind of dialogue with the regional level, even if it has not been applied to date due to no regional parliament expressing a conflicting position as regards the European proposals.

The national parliament reports that since the Lisbon Treaty entered into force and until to date, no reasoned opinion has been received from the regional parliaments as regards a breach of the subsidiarity principle. All opinions received have been in agreement or related to proportionality issues.

### **Follow-up/feedback from the national Parliament**

The national parliament takes the final decision as to whether an EU draft legislative proposal complies with the subsidiarity principle, and there is no specific procedure for informing the regional parliaments of, or discussing with them such a decision which, once taken, is published in the Official Journal (*Boletín Oficial*). Thus all the regional parliaments have pointed to a lack of transparency regarding the process for reaching the final decision by the national parliament, especially when the decision is based on their position(s)/contribution(s). That is why some of them are keen to receive a more adequate follow-up/feedback from the national parliament.

### **Does closer cooperation needed to be developed?**

In general, closer cooperation is considered to be important by the Spanish national and regional parliaments for promoting their effective participation in the European legislative process. For some of them, it would be better to establish criteria and basic elements to set up an 'oriented' coordination. COPREPA is working on the establishment of a coordination mechanism between the regional parliaments which would be applied in the future. On the other hand, certain regional parliaments do not see an immediate need for closer cooperation, feeling it is preferable to see how the EWS develops and is implemented and maybe wait to see whether a specific cooperation mechanism would apply in the future (Cantabria, Galicia).

Synoptic table: The enforcement of the Early Warning System in Spain

Procedures followed by the national parliament and the regional parliaments		
	National level	Regional level
	Joint Committee for the European Union*	Regional Parliaments
Subsidiarity scrutiny procedures	The subsidiarity scrutiny procedure is provided by Law 8/1994, as modified by L. 24/2009.	Some regions have a specific procedure, established by the internal law of procedure (for example Extremadura, Cantabria, La Rioja and Murcia). Others have not established any specific procedure.
Human resources and capacity building	No specific measures have been taken, but the Secretariat of the Joint Committee has been reinforced.	The large amount of information transmitted through the EWS framework would require specific structures and competences, but it is felt that the civil servants working on this are highly qualified and well prepared.
Filtering procedure	No filter. All the EU draft legislative proposals are sent to the regional level according to Article 6 L. 8/1994, as modified by Law 24/2009	In general no filter is provided, but in some regions the parliamentary groups analyse all the proposals serving as a sort of technical filter
Cooperation with other national/regional parliaments	The permanent representative in Brussels plays an important role in providing early information and coordination.	COPREPA, CALRE and REGLEG are the main instruments. <a href="http://www.calrenet.eu">www.calrenet.eu</a> is going to be developed in order to create a forum between all the regional parliaments participating in COPREPA.
Visibility/acc	All debates are public,	There is sufficient publicity of

ess to the results of the subsidiarity analysis	available via television and internet, and published in the Official Journal.	the subsidiarity scrutiny for those interested: nevertheless the general public is not aware of the role of the regional parliaments.
Cooperation between the national parliament and the regional parliaments		
	Joint Committee for the European Union*	Regional parliaments
Transmission of EU draft legislative acts	The national parliament officially receives the proposals when all official languages are ready. Sometimes the Commission sends documents before the opening of the 8-week period. Contrary to other countries the Spanish P. does not receive earlier versions through the permanent representative in Brussels.	Received from the national parliaments when the translations into all official languages have been made. There is no use made of earlier versions at the regional level.
Time limit for expressing regional opinion(s)	Four weeks from the moment when the documents are sent to the regional assemblies. The national parliament can officially start the debates from the beginning of the eight-week period, but in practice, they remain attentive to the potential input to be received during the initial four-week period given to the regional parliaments.	Four weeks from the moment they receive the proposal from the national parliament. It is not considered sufficient. There is no early work with the Spanish translated version, even if available at an earlier stage in Brussels.
Differing points of views at national and	Each competent rapporteur ( <i>ponente</i> ) considers the positions expressed by the regional level.	The final decision is taken at the national level. Regional parliaments cannot exercise control. There is not a specific



regional levels		proceeding to find a common position See Article 6.3 L. 24/2009.
Follow-up/feedback from the national parliament	Publication in the Official Journal. There is not a specific mechanism for feedback.	No info but it is possible to consult the Official Journal.
Does closer cooperation need to be developed?	Is extremely important to exchange information and best practices.	Yes, extremely important. At the present moment CALRE, REGLEG and COPREPA are developed, but need to better implement and use those systems. <a href="http://www.calrenet.eu">www.calrenet.eu</a> is a means of cooperation.

## ***2.3. Asymmetrical regionalised States***

### **2.3.1. Finland**

#### **General background**

Finland has a 200-seat unicameral parliament (Eduskunta<sup>45</sup>). Members of Parliament (MPs) are elected directly and by secret ballot according to a proportional system based on districts every four years. An important reform of Finland's Constitution came into force on 1 March 2000. The new Constitution of Finland has strengthened parliament's role as the supreme organ of state (e.g. the Prime Minister is elected by Parliament). The speaker – elected amongst the MPs, together with the Speaker's Council, leads the parliamentary activity.

Within Finland there is one geographic entity, the Åland Islands, which has had internationally and constitutionally entrenched autonomy since 1921. The Åland Islands has its own parliament (Ålands Lagting)<sup>46</sup> and government (Ålands Landskapsregering). The competence of the Åland Parliament is exclusive and not delegated by the Finnish Parliament or Government. The Åland Parliament has 30 seats. Members are elected every four years directly and by secret ballot.

Subsidiarity is one of the issues that the Eduskunta's committees have routinely examined in EU proposals since 1995, especially through the parliamentary scrutiny system of EU matters introduced at the time of Finland's accession to the EU. With regard to this scrutiny, the Eduskunta has delegated its powers to the Grand Committee (Suuri valiokunta, Stora utskottet)<sup>47</sup>, acting as the Parliament's EU Committee. Its most important task is to ensure that the national parliament has a proper say in EU decision-making and that parliamentary scrutiny is effective in this regard, especially when defining Finland's position on matters to be decided in the EU Council on behalf of the

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<sup>45</sup> <http://web.eduskunta.fi>. In Swedish, it is called the 'Riksdagen'.

<sup>46</sup> <http://www.lagtinget.aland.fi/>.

<sup>47</sup> Except for the Common Foreign and Security Policy and the Common Security and Defence Policy, which have been delegated to the Foreign Affairs Committee.

Eduskunta as a whole. Some scholars have underlined that Finland is promoting its scrutiny model towards its EU partners, and this has inspired several of the parliaments of the new Member States when establishing their own European scrutiny system.<sup>48</sup>

Regarding the subsidiarity control mechanism, an *ad hoc* “Committee to assess EU scrutiny procedures” was appointed by the Council of the Finnish Parliament’s Speaker in November 2003 in order to assess the impact of the EU’s Constitutional Treaty on the European scrutiny system. The conclusions of the *ad hoc* committee were agreed and submitted to the Speaker’s Council on 18 February 2005.

Concerning the consultation of legislative regional assemblies on subsidiarity within the EWS framework, Finland also prepared itself and involved the Åland Parliament in such preparation.<sup>49</sup>

Furthermore it has to be noticed that the Member of Parliament from the Åland Islands also has the right to attend Grand Committee meetings. With the entry into force of the Lisbon Treaty and of the EWS provisions, an amendment to the Åland Autonomy Act was adopted by the regional parliament. An identical decision has now to be taken by the Finnish Parliament to come into force. The final decision will be endorsed by the new parliament after the elections to be held in April 2011.

So far neither the Finnish nor the Åland Parliament has initiated any activity within the EWS procedures; the usual scrutiny procedure of EU matters is being used, and has already generated some 200 positions in 2010.

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<sup>48</sup> See Philipp Kiiver, “European scrutiny in a comparative perspective”, Maastricht University, p. 50. Electronic copy available at: <http://ssrn.com/abstract=1426078>.

<sup>49</sup> The Åland Parliament has given a statement to the *ad hoc* committee when pursuing its mandate.

## Procedures followed at the national and regional levels

### Subsidiarity scrutiny procedures

#### The Finnish Parliament

In its 2005 report<sup>50</sup>, the “Committee to assess EU scrutiny procedures” concluded that there should be no need to change the statutes concerning the Eduskunta's participation in the formulation of Finnish policy on EU matters. Nevertheless, the subsidiarity control mechanism would necessitate the creation of a procedure whereby the Eduskunta, if it wishes, could raise an objection on subsidiarity grounds. The *ad hoc* committee considered that it would be appropriate to assign the subsidiarity control task to the Grand Committee and submitted a draft proposal to amend the Eduskunta's Rules of Procedure to this effect. Yet no need for constitutional amendments was envisaged. The *ad hoc* committee also stressed that it would be in accordance with the Finnish system for the Grand Committee to continue consulting with the government on subsidiarity issues. All in all, subsidiarity will continue to be an element of the usual scrutiny process of ‘U-matters’ (EU legislative proposals within the Eduskunta's traditional powers) and ‘E-matters’ (other EU proposals<sup>51</sup>).

Concerning the Åland Parliament, the *ad hoc* committee proposed that the hearing of the Åland Parliament on subsidiarity should be integrated into the subsidiarity mechanism in the Grand Committee, while specifying that the Eduskunta's information systems need to be developed so that information can be provided to the Åland regional parliament at the same time as within the Eduskunta.<sup>52</sup> It thus concluded that the Rules of Procedure needed to be amended.

Following the *ad hoc* Committee's conclusions, the Finnish Parliament established a procedure for conducting the work to be performed within the framework of the EWS, as stipulated by the Parliament's Rules of Procedure and the Rules of Procedure of the Parliament's Grand Committee, amended on 1

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<sup>50</sup> “Improving EU Scrutiny”, Report of the Committee to assess EU scrutiny procedures, EDUSKUNNAN KANSLIAN JULKAISU 4/2005.

<sup>51</sup> These can be either legislative – but not of sufficient importance to warrant compulsory parliamentary scrutiny – or non-legislative.

<sup>52</sup> See abovementioned 2005 report pp. 7 & 8.

December 2009. The procedure was created in consultation with the Åland Parliament.

The subsidiarity scrutiny procedures in the Finnish Parliament can be summarised as follows:

European legislative proposals subject to the EWS are transmitted electronically by the EU Secretariat to the members of the Grand Committee (i.e. EU committee), the appropriate sector committee (e.g. labour legislation to the Labour Committee) and the Åland Parliament. Each of them may propose that the Grand Committee should examine the proposal in terms of its conformity with the principle of subsidiarity.

If the proposal comes from members of the Grand Committee or from a sector committee, the Grand Committee takes a separate decision on whether or not to carry out the examination. If the proposal comes from the Åland Parliament, the examination is compulsory.

If the examination is carried out, the final result will be a report to the parliament's plenary. Should the report conclude that there has been a violation of the subsidiarity principle, the report will include a draft reasoned opinion addressed to the EU institutions. If the report finds no breach of the subsidiarity principle, it will still be forwarded to the EU institutions. It is the Parliament's plenary which takes the final decision.

In all cases, any input from the Åland Parliament will be included verbatim in the material forwarded to the EU institutions.

However, the Finnish Parliament pointed out that all EU proposals of any significance are subject to the usual parliamentary scrutiny procedure, which gives the national parliament considerably greater powers than the EWS procedure as such. It is therefore expected that the EWS procedure will hardly ever be used.

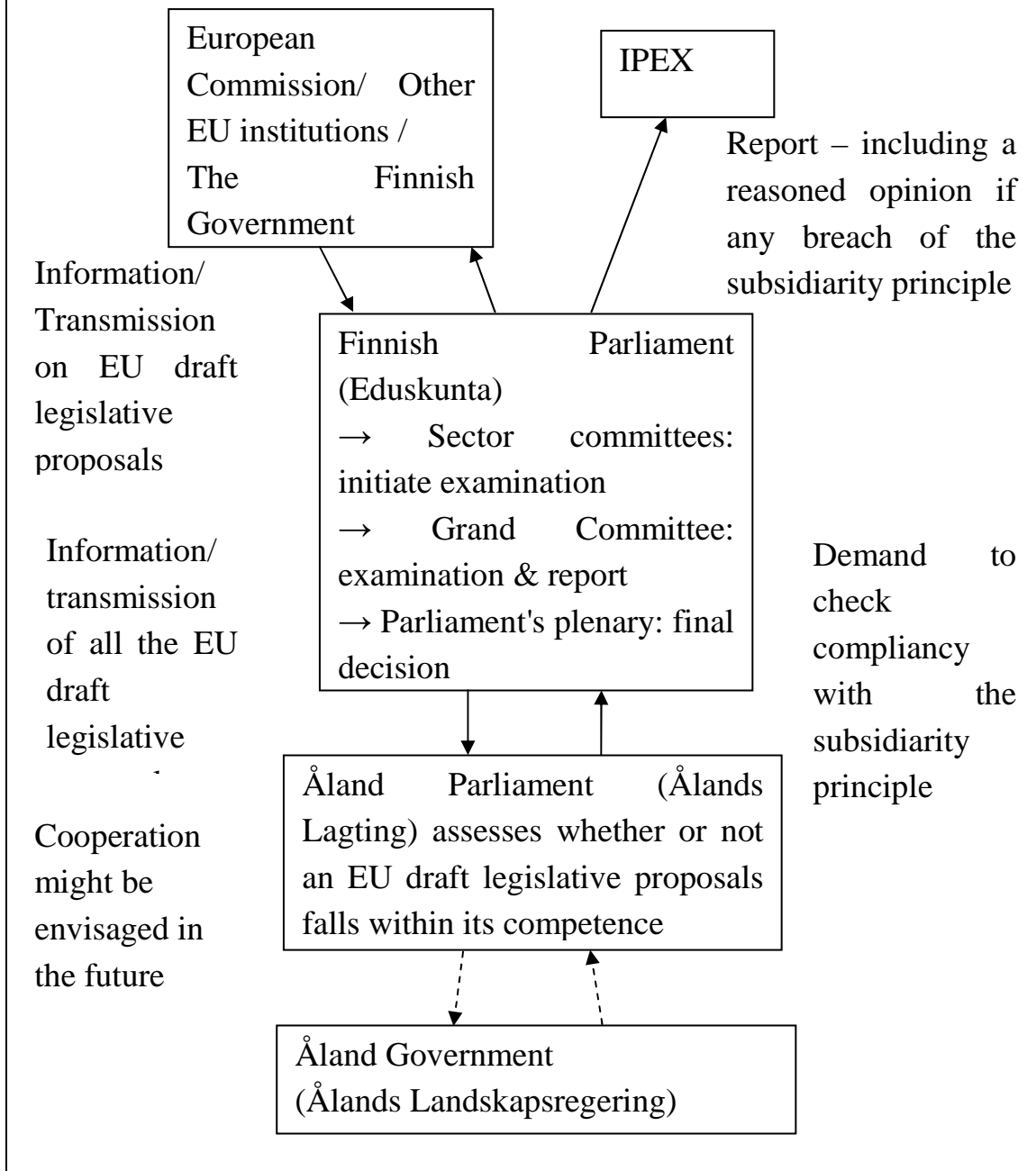
## **The Åland Parliament**

The Åland Parliament has not yet established a procedure to conduct the work to be performed within the EWS. This is planned for after the April 2011 elections for the renewal of the national parliament. So far, the only procedure that has been decided upon is the one regarding the reception of documents.

The Åland Parliament neither established a coordination mechanism with the regional government, yet it underlined that this might be possible to counterbalance the lack of human resources, nor a specific communication procedure with the EU institutions in the framework of the EWS.

So far, there has been no regional input into the parliamentary subsidiarity analysis in the framework of the EWS carried out at the national level, as well as there being no data available regarding the former or current subsidiarity analysis performed by the Åland Parliament within the EWS.

Subsidiarity scrutiny procedures step by step in Finland:



**Filtering procedures**

In Finland, there is no filtering for EU draft legislative acts at the national level, as all proposals covered by the EWS are sent to the Åland Parliament. It is up to the latter to make the initial assessment of whether or not an EU proposal is within the competence of the region; yet in the latter case, the national parliament may subsequently agree or disagree with the assessment.

Moreover, so far, no filtering procedure exists or will be established at the regional level to decide on the relevance of the EU draft legislative acts for Åland.

### **Human resources and capacity building**

The Eduskunta's Grand Committee's secretariat consists of two lawyers<sup>53</sup> and four clerical staff. Each of the 15 sector committees has one to three lawyers working in their respective secretariats (at least one of them being qualified in European law). After 15 years' experience of scrutinising European proposals (including compliancy with the subsidiarity principle), the Finnish Parliament has developed real expertise. As in its view, the EWS does not add any new substantive issues, so no particular training was needed.

To become prepared for the new EWS provisions, the staff in the Åland Parliament, together with the staff of the Finnish Parliament, have organised a procedure for receiving the EU draft proposals. At this point no other preparations have been made.

Concerning expertise present at the regional level, the Åland Parliament specifies that the staff members dealing with the questions of subsidiarity are lawyers; while pointing out that depending on which procedure is being implemented, the procedure can turn out to be a heavy burden. The Åland Parliament stressed that its staff is very small compared to the national parliaments and there is no political wish to hire extra personnel for the new EWS tasks. Thus the lack of human resources will be a problem if there is a political willingness to deal specifically with all or numerous incoming EU draft proposals.

To the question of whether the regional parliaments' committees dealing with European affairs should play a more important role, the Åland Parliament answered positively, as at present their views on the EU proposed legislation do not make any difference.

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<sup>53</sup> One specialised in EU law and the other in constitutional law.



## **Cooperation with other national/regional parliaments**

According to the Finnish Parliament, informing national parliaments in other Member States in addition to publication on the IPEX website will be decided *ad hoc*, as well as any coordinated work. It is interesting to recall here one of the *ad hoc* committee's statements on that specific issue: "The Grand Committee will need to deal with subsidiarity objections raised by other national parliaments. The Grand Committee may also ask other national parliaments to support its objections. The committee does not consider that these situations require any special regulation; the Grand Committee can act in accordance with its own lights and whatever practice evolves"<sup>54</sup>.

The Åland Parliament has not established information/coordination mechanisms with regional parliaments in other Member States within the EWS framework, but stresses that it is possible that such mechanisms will be established later on if it becomes apparent that there is a need for one. Yet, the Åland Parliament specifies that it cooperates with CALRE and REGLEG. Its president attends CALRE meetings and the Åland government attends REGLEG meetings.

## **Visibility/access to the results of the subsidiarity analysis**

The Finnish Parliament considers its subsidiarity scrutiny procedures to be sufficiently transparent and accessible to the public, also concerning the access to the results of subsidiarity analysis. It also considers that these results will have sufficient visibility *vis-à-vis* the EU institutions and other Member States' national parliaments, as far as institutional procedures go. It pointed out that on the basis of experience so far, one may query how great the visibility of parliaments that have provided input to the EWS has been, as such visibility might possibly reflect the importance of the issue.

According to the Åland Parliament, it is too early to have an opinion on transparency and accessibility to the results of the subsidiarity analysis conducted at the regional level as the details of the process have yet to be decided. Meanwhile, information about the opinion of the Åland Parliament

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<sup>54</sup> See abovementioned 2005 report p. 36.

regarding subsidiarity will be published on the IPEX website as it will be included as such in the national parliament's report.

Presently, the Åland Parliament does not know how to get information about other regional parliaments' procedures and decisions, thus no visibility vis-à-vis the latter is ensured.

## **Cooperation between the Finnish Parliament and the Åland Parliament**

### **Transmission of EU draft legislative acts**

In Finland, the EU draft legislative acts are forwarded electronically to the Åland regional parliament's designated e-mailbox at the same time as they are distributed within the national parliament. In general, they are transferred to the Åland regional parliament every working day, within hours of being received by the national parliament. The Åland parliament confirmed that the Finnish Parliament forwards the documents within a short time delay, sometimes the same day, sometimes a few days after their reception. As Åland is a unilingual Swedish-speaking autonomy in Finland, the Åland Parliament will receive the EU legislative drafts when there is a Swedish version available.

### **Time limit for expressing the regional opinion**

The Grand Committee of the national parliament has requested that any input from the Åland Parliament be received within six weeks, allowing two weeks for processing. However, the time limit may be extended on an *ad hoc* basis. This six-week time limit is considered by the Åland Parliaments being too short but appropriate with regard to the eight-week limit set in the EU Treaty Protocols n°1 and 2.

### **Taking the regional opinion into account**

When the Åland Parliament sends its reasoned opinion to the Eduskunta's Grand Committee, the latter is obliged<sup>55</sup> to consider it but is not bound by its

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<sup>55</sup> If a committee within the Eduskunta sees a subsidiarity problem, the Grand Committee has discretion whether to examine it or not. But examination is compulsory if the initiative comes from Åland.

conclusions. Thus the procedure described above regarding subsidiarity scrutiny will be launched. The report drafted by the Grand Committee, to be examined by the chamber sitting in plenary, will include verbatim the Åland parliament's observations. If the plenary decides not to adopt a reasoned opinion, the Grand Committee's report will in any case be forwarded to the EU institutions for information.

Moreover, if the Finnish Parliament is aware of the REGLEG and CALRE positions when performing the subsidiarity analysis, they might be added to the evidence.

### **Differing points of view at national and regional levels**

The decision on issuing a reasoned opinion is taken by the national parliament. However, the Finnish Parliament has undertaken measures to ensure that the views of Åland Parliament are communicated to the EU institutions. Indeed, given the fact that the Åland Parliament has an absolute right of initiative in subsidiarity matters, when competent, its opinions/arguments will be included verbatim in the Finnish Parliament's final reasoned opinion – or forwarded to the EU institutions with the national parliament's procedural documentation, if the latter ultimately decides not to issue a reasoned opinion.

### **Follow up/feedback from the national Parliament**

In principle, it is assumed that the Åland Parliament keeps itself informed of what the national parliament decides to the extent that the Ålanders consider necessary; everything is accessible online. On its side, the Åland Parliament specifies that this has yet to be decided.

### **Does closer cooperation need to be developed?**

The Åland Parliament points out that it decides independently on all matters that fall within its competence. The Åland Parliament wanted to be able to use one of the two votes that Finland has if the proposed legislation falls within its regional competence, but this was not granted. Consequently, according to the Åland Parliament, the subsidiarity scrutiny procedure in Finland does not guarantee that the national parliament will consider its opinion when voting.

Synoptic table: the enforcement of the Early Warning System in Finland

	National level	Regional level
Procedures followed by the national parliament and the regional parliaments		
Subsidiarity scrutiny procedures	Even if a specific procedure has been set up within the EWS framework, the latter might not be used often due to the effective Finnish system of parliamentary scrutiny in EU matters already in place.	No subsidiarity procedure established yet.
Filtering procedures	No filtering	No filtering
Human resources and capacity building	Adequate staff resources for existing EU scrutiny procedures. Can easily assume EWS tasks.	Very small staff, lack of human resources will be a problem if numerous EU draft legislative acts are received and to be scrutinised.
Cooperation with other national/regional parliaments	Ad hoc	No
Visibility/access to the results of the subsidiarity analysis	Sufficiently transparent and accessible to the public and the EU institutions.	Too early to have a position on that. Any input to the national parliament will be mirrored on IPEX.
Cooperation between the national parliament and the regional parliaments		
Transmission of EU draft legislative acts	Yes, they are forwarded electronically after reception.	Yes, they are forwarded electronically shortly after reception at the national level.

Time limit for expressing regional opinion	Six weeks extendable	Six-week time limit considered as being short but appropriate with regard to the eight-week time limit of the EWS.
Taking the regional opinion into account	When the Åland Parliament sends its observations to the Grand Committee in the Finnish Parliament, the latter will consider it but is not bound by it. Either way, the Finnish Parliament will pass on the Åland Parliament's opinion to the EU institutions.	According to the Åland Parliament, the subsidiarity scrutiny procedure in Finland does not guarantee that the national parliament will consider its opinion when voting.
Differing points of view at national and regional levels	The decision on issuing a reasoned opinion is taken by the national parliament. However, the national parliament has taken measures to ensure that the views of the Åland Parliament are communicated to the EU institutions.	When a subsidiarity issue falls within the competence of the Åland Parliament, its opinions/arguments will be included verbatim in the Finnish Parliament's final reasoned opinion - or forwarded to the EU institutions with the national parliament's procedural documentation, if the latter ultimately decides not to issue a reasoned opinion.
Follow-up/feedback from the national parliament	No, the Åland Parliament has to keep itself informed of what	This has yet to be decided.

	the national parliament decides.	
Does closer cooperation need to be developed?	Cooperation with the Åland Parliament is always welcome, but subsidiarity analysis is unlikely to be frequent.	Concern raised by the Åland Parliament that the subsidiarity scrutiny procedure in Finland does not guarantee that the national parliament will consider its opinion when voting.

### 2.3.2. Portugal

#### General background

The national parliament of Portugal (*Assembleia da República*) is unicameral and composed of 230 members, elected by universal direct, secret suffrage for a four-year mandate. Administratively, Portugal is made up of three territorial areas: the mainland and the two autonomous regions (*regiões autónomas*) of the Archipelagos of the Azores and Madeira. The mainland is divided into 18 districts (*distritos*), each headed by a governor appointed by the Minister of Internal Administration. The Archipelagos of the Azores and Madeira have a constitutionally mandated autonomous status.

The Portuguese Constitution and the Law 43/2006 of 25 August 2006, which regulates the work of the European Affairs Committee (EAC), provides the Portuguese Parliament with the necessary legal basis to comply with the Lisbon Treaty when scrutinising compliance with the principle of subsidiarity: “when the formal written opinion refers to a matter that falls within the responsibility of the legislative assemblies of the autonomous regions, the said assemblies shall be consulted in good time” (Article 3, paragraph 3). Nevertheless, according to the responses to our questionnaire<sup>56</sup>, this law could be amended in the near

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<sup>56</sup> As of the date of concluding this report (20 December 2010) the research team based its work on the responses coming from the national level, since the regions of Azores and Madeira did not send a reply to the questionnaire.

future in order to incorporate some of the mechanisms introduced by the Treaty of Lisbon.

In fact, in January 2010 a specific procedure for scrutiny of European initiatives was provided by the EAC establishing four different types of scrutiny at national level (described below), but not including any specific procedure for transfer of initiatives towards the regional level.

## **Procedures followed at the national/regional levels**

### **Subsidiarity scrutiny procedures**

On 20 January 2010, the EAC revised its parliamentary scrutiny procedures of European initiatives to adapt them to the new subsidiarity check provisions of the Lisbon Treaty. It established four types of scrutiny: enhanced scrutiny; normal scrutiny; urgent scrutiny and other scrutiny procedures.

The enhanced scrutiny is initiated with the Legislative and Work Programme of the European Commission, when the parliamentary committees will give notice of whether they intend to submit any legislative initiative or matter to enhanced scrutiny. If it chooses to do so, the EAC will take part in an enhanced scrutiny process for a maximum of six initiatives a year, selected by the EAC, from those suggested by the parliamentary committees. To this end, the EAC, working in cooperation with the parliamentary committee in question, will draw up a broader work programme which includes analysis of the draft, a request for clarification from the government, obtaining information from EU institutions, exchange of information with other national parliaments, hearings (with the Commissioner proposing the draft, the Presidency of the Council and the MEP acting as rapporteur), public hearings, gathering views from stakeholders and producing studies. The work plan should take into account the need to comply with the eight-week time limit for pronouncement on compliance with the principle of subsidiarity.

Under the normal scrutiny, the EAC receives draft legislative proposals from the Commission, which distributes it on a daily basis to the competent parliamentary committees for their information or opinion. Whenever it is decided to draw up a report on a legislative initiative, the relevant parliamentary committee should inform the EAC and draw up its report within six weeks from the date on which the Portuguese version of the initiative is available. The report may deal with

questions of substance, subsidiarity and proportionality. The conclusions should state separately each of those issues. The report is then forwarded to the EAC, which has two weeks to draw up its own written opinion or reasoned opinion. Whenever the relevant parliamentary committees decide not to draw up a report, the EAC may decide to produce a written opinion without such a report.

Urgent scrutiny occurs whenever the EAC learns (through IPEX, reports from the representative in Brussels, etc.) that a given legislative initiative of the European Commission is causing other national parliaments to have doubts on the compliance of an EU initiative with the principle of subsidiarity; it may instigate a procedure of urgent scrutiny. In such cases, the EAC will be responsible for drawing up the opinion and, if it sees fit, requiring that the competent parliamentary committee speaks on the initiative.

Finally, with regard to the other scrutiny procedures, it may occur that the relevant parliamentary committee or the EAC decides to analyse an initiative (non-legislative or sent by an institution other than the European Commission) because of its relevance, in which cases the EAC sets time limits for this purpose.

These procedures - according to the responses to our questionnaire - have been established without consultation of the regional assemblies, and they do not reflect any new obligation or compromise for transferring the European initiatives to the regional chambers (except for the abovementioned obligation according to Art. 3 – 3 Law 43/2006). Regional participation could also be envisaged during the public hearings organised every year by the EAC in order to discuss the priorities that should be chosen for the enhanced scrutiny.

Nevertheless, according to the responses to our questionnaire, in the near future, the establishment of a formal procedure with the participation of the regional parliaments could be envisaged.

The EAC plays a pivotal role in the organisation of the scrutiny process. It is active at the beginning of the process, setting it in motion, and at the final stage, approving the final opinions. The other committees play a central role in the middle of the process, namely providing sectoral monitoring and it is up to them to define their own methodology for managing the proposals that fall within their remit. The EAC will only play a role at this stage if the specialist



committee with responsibility for the matter in question decides not to take action or when a proposal is considered to be included at the EAC List of Priorities for political assessment. The two rapporteurs (one from the specialist committee and the other from the EAC) can work together from the outset. Ultimately, the opinion of the plenary or, in case of urgency, the opinion of the EAC prevails.

The Portuguese Parliament receives information from the Portuguese Government, as well as from the Council and the European Parliament, through specific e-mail boxes. Along with these instruments, the Permanent Representative of the Portuguese Parliament in Brussels makes the bridge between the EAC in Portugal and the EU institutions in order to update all relevant information.

The assembly may send the Presidents of the European Parliament, the Council or the European Commission a duly substantiated formal written opinion on the reasons why a draft legislative or regulatory text by the Commission fails to comply with the principle of subsidiarity. Even if the monitoring process involves both the Plenary and the several committees, the EAC is the standing parliamentary committee specialised in European affairs.

The subsidiarity scrutiny procedures in the Portuguese Parliament can be summarised as follows:

According to Law 43/2006 of 25 August and to the new procedure approved by the European Affairs Committee on January 2010, the procedure of scrutiny at national level can be distinguished in four different types of control: enhanced scrutiny, normal scrutiny, urgent scrutiny and other scrutiny procedures.

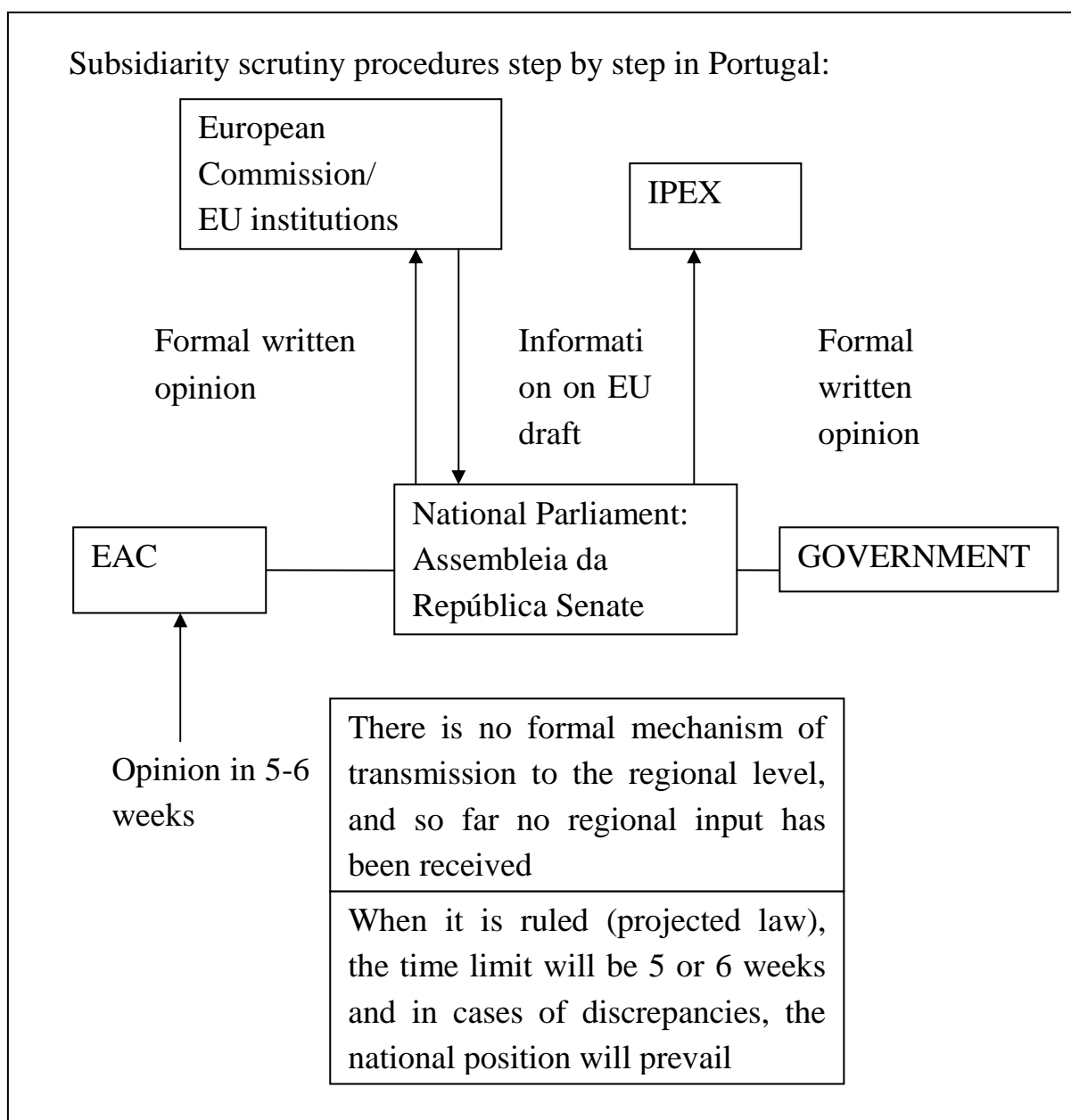
The EAC pre-selects the relevant information for the purposes of the parliament's monitoring of the EU construction process from the Portuguese Government, from the European institutions and from IPEX. A weekly list of all the EU draft legislative proposals is provided to the specialist committees so that they can start up any scrutiny process that may be necessary by preparing a report. The initiatives considered to be a priority are selected as categorised in

the described system. In this way the EAC can carry out its scrutiny process, without depending on the activities of the specialist committees.

If the specialist committee decides to prepare a report, the EAC also nominates rapporteurs who will wait for the report from the committee responsible for the subject in question. On the basis of the report a formal written opinion is prepared. This opinion will be used to formalise the closure of the scrutiny process.

If the scrutiny process results in a decision to issue a formal written opinion on compliance with the principle of subsidiarity, the EAC can submit a draft resolution to the plenary; this, after being voted on, is sent by the president of the Assembleia da República to the Presidents of the EU Parliament, the Council or the EU Commission. The parliamentary practice has above all favoured political debate on the major European questions and due preparation of the Portuguese Parliament for the new Lisbon Treaty provisions on subsidiarity.

So far, and since the entry into force of the Treaty of Lisbon, there has been no regional input into the parliamentary subsidiarity analysis in the framework of the EWS. Nevertheless, both the Portuguese regional legislative assemblies were consulted during the negotiations on the Constitutional Treaty and since the "Barroso initiative" (2006) the Portuguese Parliament has asked for the opinion of those assemblies on specific subjects (and when the MP rapporteur was elected from one of the two autonomous regions, he/she tended to consult those assemblies).



### Filtering procedures

To filter EU legislative acts in order to decide whether it is appropriate to submit them to the regional parliaments, the Constitution of the Portuguese Republic and the Rules of Procedure of the Portuguese Parliament establish that whenever a subject is of interest to the two autonomous regions (Azores and Madeira) and falls under its exclusive competence, the opinion of the regional legislative assemblies should be sought. Moreover, regarding compliance with the subsidiarity principle, Law 43/2006 states that “When the formal written opinion refers to a matter that falls within the responsibility of the Legislative Assemblies of the autonomous regions, the said assemblies shall be consulted in

good time.”<sup>57</sup> In the near future, a formal procedure with the participation of the regional parliaments may be established; however, the current one was established without any consultation.

### **Human resources and capacity building**

The biggest challenges to be considered are mainly political willingness and, secondly, time constraints.

### **Cooperation with other national/regional parliaments**

Normally cooperation with other national parliaments is managed through IPEX and the permanent representation in Brussels. Usually the information is published on IPEX, but in special cases – for instance, when national parliaments in other Member States have asked for the Portuguese opinion on a specific matter – the EAC also informs specific national parliaments on concrete aspects of the opinion and/or provides further information. The Portuguese Parliament mainly uses the national parliament’s Permanent Representatives’ network in Brussels to exchange information in the early stages of the scrutiny procedure, especially when doubts on the compliance of an EU initiative with the principle of subsidiarity have been raised by some national parliaments. However, to exchange information about final written or reasoned opinions, it also works with the IPEX correspondents’ network through e-mail contact. As far as the political level is concerned, the Portuguese MPs participate in the inter-parliamentary meetings (either organised by the presidency or by the EP, such as the Speaker's Conference, COSAC, etc.) in order to exchange views on common concerns and to coordinate, if and when possible, a common approach to a specific matter.

### **Visibility/access to the results of the subsidiarity analysis**

Presently, the opinions produced by the Portuguese Parliament are published in the Assembleia da República's official journal and on the IPEX website, with a short summary in English. Moreover, the Portuguese Parliament intends to set

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<sup>57</sup> Article 3, paragraph 3.

up later this year an online intranet database on its activities related to the scrutiny of European initiatives. Thus, against this background, the national Parliament considers these actions to be quite satisfactory in terms of transparency and accessibility to the public.

## **Cooperation between the national parliament and the regional parliaments**

### **Transmission of EU draft legislative acts**

With the exception of cases when regional competences are involved, there is no specific mechanism for transmitting EU legislative acts to the regional parliaments. When their interests are at stake, the acts should be sent to regional parliaments in less than a week. It is also important to consider that the European Affairs Committee can also organise public hearings with the legislative assemblies of the autonomous regions of the Azores and Madeira, depending on the matter in question.

### **Time limit for expressing regional opinion(s)**

Whenever that occurs, the time limit will be set at between five and six weeks, under the normal scrutiny procedure.

### **Taking the regional opinion(s) into account**

There is not yet a specific mechanism at the national level to coordinate regional parliaments' work when their interests are at stake in EU legislative acts. However, according to the opinion of the national parliament, it is possible with the current tools to establish such coordination whenever necessary.

In its responses, the Portuguese Parliament agrees that it is prepared to take into account the perspective/concerns expressed by the regional parliaments in their subsidiarity analysis. When receiving the opinion from the regional parliament, it should be analysed by the EAC's rapporteur along with the report from the relevant committee. Then a single written/reasoned opinion will be produced, which should take into account the two documents (the one from the regional

parliament and the one from the relevant committee) that will be attached to the EAC final opinion.

It is not common for the Portuguese Parliament to consider the positions of REGLEG and/or CALRE, but in some cases, when the subject is linked to its competences (Article 164 and 165 of the Portuguese Constitution<sup>58</sup> refer to the exclusive and partially exclusive responsibilities to legislate), they can be taken into account as was the case for the EC communication on "The outermost regions: an asset for Europe".<sup>59</sup>

### **Differing points of view at national and regional levels**

In such cases (there is no experience of this possibility so far) according to the answers to the questionnaire, the different points of view at national and regional level should be referred to and mentioned in the final position, but the final position should be that of the national parliament.

### **Follow-up/feedback from the national parliament**

Whenever the regional parliaments are involved in a scrutiny procedure, the EAC will inform them about its final opinion regarding the compliance of an EU legislative proposal with the subsidiarity principle.

### **Does closer cooperation need to be developed?**

In order to enrich the EWS and not to obstruct it, regional parliaments with legislative powers and their respective national parliament need to envisage closer cooperation in conducting a subsidiarity analysis on matters following on from the powers and/or the political interests of those regions.

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<sup>58</sup> Constitution of the Portuguese Republic Seventh Revision 2005

<sup>59</sup> COM/2008/0642.

Synoptic table: the enforcement of the Early Warning System in Portugal

	National level	Regional level
Procedures followed by the national parliament and the regional parliaments		
Subsidiarity scrutiny procedures	<p>Law 43/2006: legal basis with which to put into practice the Lisbon Treaty.</p> <p>This law may be amended to incorporate some of the mechanisms introduced by the Lisbon Treaty.</p> <p>The EAC, European Affairs Committee is responsible for monitoring the subsidiarity scrutiny process, and for providing the written opinion: four new scrutiny procedures have been in place since January 2010.</p>	-
Filtering procedures	<p>Portuguese Constitution provisions, Law 43/2006 Article 3.3 and Rules of Procedure of the Parliament: whenever a formal written opinion refers to a matter that falls within the responsibility of the legislative assemblies of the autonomous regions (Azores and Madeira) and falls under its exclusive competence, the regional legislative assemblies should be asked their opinion.</p> <p>L. 43/2006. Filtering decision made at EAC level</p>	-

Human resources and capacity building	The biggest challenges are political willingness and time constraints	-
Cooperation with other national/regional parliaments	IPEX, Permanent representation in Brussels, inter-parliamentary meetings such as COSAC, COFACC, JPM, JCM, Speaker's Conference.  The EAC also informs specific national parliaments about concrete aspects of the opinion and/or provides further information. Participation in inter-parliamentary meetings	-
Visibility/access to the results of the subsidiarity analysis	Official Journal and published at IPEX. Intranet database	-
Cooperation between the national parliament and the regional parliaments		
Transmission of EU draft legislative acts	No mechanism envisaged so far.	-
Time limit for expressing regional opinion(s)	In case of consultation in the future (has not yet happened) it will be 5-6 weeks	-
Taking the regional opinion(s) into account	Has not yet happened, but the regional opinion should be analysed by the EAC rapporteur, and taken into account when preparing the written reasoned opinion	-
Differing points of view at national and regional levels	No specific mechanism, but answers to questionnaire indicate that it should be referred to in the final position.	-



Follow-up/feedback from the national parliament	The EAC should inform regional parliaments about the final opinion	-
Does closer cooperation need to be developed?	Yes, it is needed to enrich the EWS and not to obstruct it	-

### 2.3.3. The United Kingdom

#### General background

The national parliament in the United Kingdom is composed of the Sovereign, the House of Commons (the lower house) and the House of Lords (the upper house). The House of Commons consists of 650 members elected through the first-past-the-post voting system by electoral districts (constituencies). They have a mandate of five years maximum after the preceding election. The House of Lords consists of 744 members but the number of members is not fixed. Contrary to the Commons, the Lords are not elected by the population. Most are appointed by the Queen (Life Peers) or by virtue of their ecclesiastical role (Archbishops and Bishops). Following the 1999 reform of the House of Lords putting an end to the right of hereditary Peers to sit and vote in the House, the remaining traditional hereditary Peers were elected internally (Elected hereditary Peers).<sup>60</sup> The House of Commons was originally far less powerful than the House of Lords, but today its legislative powers exceed those of the Lords.

The United Kingdom also counts three devolved legislatures: the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. They all have legislative competence to enact laws but the extent of such competence differs from one legislature to another.

Parliaments/assemblies at both national and regional levels have started to prepare the practical implementation of the EWS. Revision and adaptation of their rules of procedures, as well as potential development of

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<sup>60</sup> See: <http://www.parliament.uk/about/mps-and-lords/about-lords/lords-types/>.

coordination/cooperation among the devolved legislatures themselves and between the latter and the UK Parliament are still under discussion.

## **Procedures followed at the national and regional levels**

### **Subsidiarity scrutiny procedures**

The House of Lords and the House of Commons of the UK national parliament have established parallel procedures for the subsidiarity check with regard to the implementation of the EWS and work independently.

### **The House of Commons (HoC)**

In January 2009, the European Scrutiny Committee published a First Special Report on “*Subsidiarity, National Parliaments and the Lisbon Treaty*” and concluded that “Where we have concerns, we presently draw them to the attention of the Government and, where it shares our assessment, Ministers take up the concerns with the Commission and other Member States. Again, we see no reason to expect that this will change”. It also added “We expect the Commission to listen to the views of national parliaments even if the number of opinions does not reach the levels set for the yellow and orange cards”<sup>61</sup>. With the adoption of this First Special Report, the HoC also endorsed<sup>62</sup> the proposals of the Select Committee on Modernisation of the HoC<sup>63</sup> on the proposals for the practical implementation of the EWS made in its March 2005 report specifying that<sup>64</sup>:

“We recommend that the European Scrutiny Committee should have responsibility for identifying those proposals which potentially breach the principle of subsidiarity. The system should work as follows:

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<sup>61</sup> First special report, see paragraph 37.

<sup>62</sup> First special report, see paragraph 45: “We see no reason to diverge from the recommendations of the Modernisation Committee as forming the basis for consideration of how the House should give effect to the provisions on subsidiarity, should they ever be implemented”.

<sup>63</sup> The Select Committee on Modernisation of the House of Commons is appointed by the House of Commons to consider how the practices and procedures of the House should be modernised.

<sup>64</sup> Select Committee on Modernisation of the House of Commons on Scrutiny of European Business, Second Report of Session 2004–05, Volume I, HC 465–I, published on 22 March 2005, paragraph 119.

- a) The Committee decides that a proposal does not comply with the principle of subsidiarity and sets out the reasons for this decision in a Report.
- b) The Chairman, or another member of the Committee acting on behalf of the Committee, puts a Motion on the Future Business Section C to the effect ‘That, in the opinion of this House, [the proposal] does not comply with the principle of subsidiarity for the reasons set out in the [First] Report of the European Scrutiny Committee’.
- c) Not less than five and not more than eight sitting days after notice of the Motion has been given, the Government puts the Motion on the Order Paper.
- d) The Questions on the Motion and any Amendment to it which is selected are put forthwith in the House.
- e) If the Motion is agreed to, the Speaker forwards the text of the Resolution, together with a copy of the European Scrutiny Committee’s Report, to the relevant EU institution”.

The European Scrutiny Committee “considers however that, if a debate is not to take place, the chairman or designated member of the European Scrutiny Committee should outline the reason for the opinion in a short speech to which a minister may reply on behalf of the government”<sup>65</sup>. The European Scrutiny Committee also underlined that “The changes to definitions contained in the Lisbon Treaty necessitate the redrafting of the Committee's Standing Order and the House's scrutiny reserve resolution. [It] will pursue with the Government the need for the redraft to make the texts clearer, simpler and tougher”<sup>66</sup>. Thus, following these considerations, the HoC did not establish a specific procedure to implement the EWS provisions. It continues to conduct subsidiarity analysis through its existing scrutiny procedure for European business, as it did for the COSAC subsidiarity checks. It is the European Scrutiny Committee, appointed under Standing Order n°143, which is in charge of examining any type of European Union documents – and legislative acts are not the only type of acts concerned by the subsidiarity check.

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<sup>65</sup> First special report, see paragraph 45 in fine.

<sup>66</sup> European Scrutiny Committee - Sixth Report The Work of the Committee in 2008-09 : <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmeuleg/267/26703.htm#note9>, see especially paragraph 47.

## The House of Lords (HoL)

In March 2003, the HoL European Union Committee published a report<sup>67</sup> on the proposed protocols on national parliaments and subsidiarity prepared by working groups in the Convention on the Future of Europe. The report explained the concept of subsidiarity and examined the role that national parliaments could play in monitoring its application. In April 2005, the EU Committee published a report on ‘Strengthening national parliamentary scrutiny of the EU – The Constitution’s subsidiarity early warning mechanism’; focusing on how the EWS could work in practice in the HoL.<sup>68</sup> The UK Government gave a written response to the report in July 2005.<sup>69</sup>

Following its reflection on how to adapt its procedures to the Lisbon Treaty provisions and especially the EWS, the HoL decided to adapt the existing parliamentary sifting and scrutiny procedures – applying generally to all types of EU documents<sup>70</sup>. Those procedures will continue to apply unless and until a subsidiarity concern is raised. Within the HoL, the subsidiarity check is conducted by the European Union Committee or one of its sub-committees (e.g. the Sub-Committee on Law and Institutions). First, the Chairman of the EU Committee sifts through the Government Explanatory Memoranda (EMs) and associated documents. The purpose of this sifting is to determine whether each document should be cleared or considered further by one of the committee’s sub-committees. These usually meet weekly when the House is in session and consider the merits of proposals in detail.<sup>71</sup> That sub-committee then scrutinises the proposed EU legislation. This scrutiny includes an assessment of whether the principle of subsidiarity (and proportionality) is complied with. Within this context, a subsidiarity concern may be raised in various ways:

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<sup>67</sup> House of Lords, Select Committee on the European Union, Session 2002-02, 11<sup>th</sup> report, “The future of Europe: National parliaments and subsidiarity - The proposed protocols”,

<http://www.publications.parliament.uk/pa/ld200203/ldselect/lducom/70/70.pdf>.

<sup>68</sup> <http://www.publications.parliament.uk/pa/ld200405/ldselect/lducom/101/101.pdf>.

<sup>69</sup> That response was published as an annex to a follow-up report on subsidiarity that the Committee published in November 2005:

<http://www.publications.parliament.uk/pa/ld200506/ldselect/lducom/66/66.pdf>.

<sup>70</sup> See the following document: “How will the Lords EU Committee operate these new powers?”

<http://www.parliament.uk/documents/lords-committees/eu-select/subsidiarity/use-new-powers.pdf>.

<sup>71</sup> Parliamentary Scrutiny of European Union Documents, Guidance for Departments, 20 April 2009:

<http://europeanmemorandum.cabinetoffice.gov.uk/files/parliamentary-scrutiny-departments.pdf>.

- in advance, through examination of the Commission's Annual Policy Strategy, Annual Legislative and Work Programme, etc.;
- during the sifting;
- in the course of the scrutiny;
- by alert from a devolved body, another national parliament or some other external quarter.

If such a subsidiarity concern is raised, then:

- the document could be fast-tracked through the sifting procedure, if necessary in advance of the Explanatory Memorandum;
- the Government could be asked for a prompt Explanatory Memorandum on the proposal at stake, including comments on compliance with the subsidiarity principle, or part-Explanatory Memorandum;
- appropriate members and staff could be stood by to act in recess if necessary.

The subsidiarity scrutiny procedures in the UK Parliament can be summarised as follows:

The Government submits an Explanatory Memorandum (subsidiarity assessment) within 10 working days of deposit of the EU legislative acts/ as early as possible.

### **House of Commons**

The European Scrutiny Committee decides whether a proposal does not comply with the principle of subsidiarity and sets out the reasons for this decision in a report. The chairman, or another member of the committee acting on behalf of the committee, puts a motion to the effect that “in the opinion of this House, [the proposal] does not comply with the principle of subsidiarity for the reasons set out in the [First] Report of the European Scrutiny Committee”.

Not less than five and not more than eight sitting days after notice of the motion has been given, the government puts the motion on the Order Paper.

The questions on the motion and any amendment to it which is selected are put to the House. If the motion is agreed to, the speaker forwards the text of the resolution, together with a copy of the European Scrutiny Committee's Report, to the relevant EU institution.

If no debate takes place, the chairman or designated member of the European Scrutiny Committee should outline the reason for the opinion in a short speech to which a minister may reply on behalf of the government

### **House of Lords**

The Legal Adviser establishes as each document arrives whether or not the procedures apply, and will indicate this as it is presented for sifting.

A committee/sub-committee which finds a breach of subsidiarity will present a draft report, incorporating a "reasoned opinion". Such a report will be confined to the issue of subsidiarity. It will indicate whether or not the document is retained under scrutiny in respect of other issues. It will have a distinctive title and a succinct and formulaic opening, easily recognisable to the EU institutions, followed by explanatory text. It is likely to be shorter than usual, and based on less evidence – possibly just the Commission's and the Government's explanatory memorandum. It will be neither "for debate" nor "for information". Depending on the procedures adopted by the House, such reports might have to be agreed and published in haste. Thus the procedure described in the Companion to the Standing Orders 10.51. might have to be used: "The chairman of the committee is authorised in urgent cases to present the report of a sub-committee to the House on behalf of the committee".

### **Scrutiny reserve (for both chambers)**

The committee/sub-committee in charge of the subsidiarity scrutiny will maintain the scrutiny reserve until a government response is received. The committee/sub-committee may in any case wish to maintain the reserve pending further scrutiny on other grounds. Until the parliamentary scrutiny is complete, ministers cannot – unless there are exceptional circumstances – adopt a formal position on European legislation in the Council.

The HoC has indicated that it will establish a specific communication procedure with the EU institutions in the framework of the EWS. The HoL stated that the EU institutions have indicated to them their wish to receive the EWS ‘reasoned opinions’ via designated e-mail boxes.

### **Cooperation between chambers**

Both the HoC and the HoL pointed out that they will work independently. We can therefore question what happened to the proposal by the Select Committee on Modernisation of the HoC to set up a new Joint Grand Committee: “We recommend that a Joint Committee of the two Houses be established to consider matters related to the European Union, along the lines proposed by the government in its memorandum” to be called the “Parliamentary European Committee”<sup>72</sup>. In its report “Scrutiny of Subsidiarity: Follow-up report”, the HoL stated that “We disagree with the suggestion that the two Houses must coordinate their response in individual cases. Each chamber has its own EU scrutiny committee and each chamber has the power to submit or not submit a reasoned opinion as it sees fit. However, we recognise that although each chamber has its own vote it will be desirable for the House to work with the Commons on subsidiarity issues and, where possible, for the two Houses to support each other when submitting reasoned opinions. In spite of this, it is important to note that if the two Houses do reach a different view on whether a yellow card should be raised in a particular case their votes would not cancel each other out – it will just be that the threshold is not one step closer to being reached”<sup>73</sup>. Moreover, it stated in the abovementioned report that “Improved communications between the HoC and the HoL would also help ensure the views of regional assemblies are presented in a timely and effective manner. The LGA notes “closer coordination between the Commons and the Lords would help local government to make representations and to give advice to parliament in a more targeted and effective way”<sup>74</sup>.

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<sup>72</sup> House of Commons, 2nd Report, Session 2004-05, HC (2004-05) 465 - Paragraphs 61(4) & 62.

<sup>73</sup> Fifteenth report House of Lords EU Committee, Session 2005-2006, paragraphs 107 & 108.

<sup>74</sup> Fifteenth report House of Lords EU Committee, Session 2005 -2006, paragraph 203.

## **The three devolved legislatures**

The Scottish Parliament and the National Assembly for Wales both underlined that there has been an ongoing dialogue on subsidiarity issues between the chairs and officials of the UK's European Committees over the last three years, including a regular exchange of information. The Northern Ireland Assembly added that the staff has also been in discussion about how devolved parliament/assemblies can best be alerted about subsidiarity issues by the national parliament.

The approaches of the three devolved legislatures will differ in some respects and internal procedures are still 'under development', but they liaise closely on subsidiarity monitoring.

There are no data available regarding former or current subsidiarity analysis performed by any of the regional parliaments within the EWS, as no subsidiarity concerns have yet been raised, although the Scottish Parliaments' European and External Relations Committee has provided responses to the UK Parliament for COSAC pilot subsidiarity checks. Since the EWS came into force there have not yet been any reasoned opinions from the UK (Scotland, Wales). Nevertheless, the Northern Ireland Assembly pointed out that there was one subsidiarity alert from the HoL European Committee in October 2010. This was passed to the appropriate statutory committee, the Northern Ireland Assembly Legal Services and to the Northern Ireland Assembly's Research and Library Service but ultimately no action was taken.

The three devolved legislatures of Scotland, Wales and Northern Ireland are preparing to adapt their respective rules of procedure to the new Lisbon Treaty provisions on the EWS.

Concerning the Scottish Parliament, the European and External Relations Committee has recommended changes to the procedures for scrutiny of draft EU legislative proposals by the Scottish Parliament, including scrutiny for subsidiarity. These recommendations require endorsement by parliament. Debate took place in the parliament on 10 December. The parliament agreed to adopt a parliament-wide EU strategy and to pilot a process for scrutinising EU legislative proposals; this also involved agreement to seek a 'formal' mechanism with the HoC/HoL for taking the views of the Scottish Parliament into account in relation to subsidiarity, rather than rely solely on the intentions as stated in the



recent exchange of letters. Moreover, those changes are likely to require changes to the Standing Orders (rules of procedure) of the parliament, as well as consideration of whether the European and External Relations Committee should be recognised as having "plenary-type powers" that would enable it to submit formal views to the UK Parliament under the EWS on behalf of the Scottish Parliament in specific circumstances (e.g. when parliament is in recess). Moreover, the EU committees of the Lords and Commons have agreed to receive and translate the subsidiarity concerns of the Scottish Parliament.

Regarding the National Assembly for Wales, the European and External Affairs Committee currently has the main oversight function for scrutiny of draft EU legislative proposals by the National Assembly for Wales. It has no formal role in relation to other Assembly Committees, but may also refer EU matters of significance to Wales to other committees for consideration. The chair of the European and External Affairs Committee has written to the Presiding Officer of the National Assembly for Wales with a request for consideration of changes to the Standing Orders (rules of procedure) of the Assembly that will come into effect under the new Assembly formed after the elections in May 2011. This requests consideration of whether the European and External Affairs Committee should be recognised as having "plenary-type powers" to enable it to submit formal views to the UK Parliament on behalf of the National Assembly for Wales.

Finally, the Northern Ireland Assembly does not have a European Committee and did not set up a specific committee for subsidiarity analysis. During the last few years the Committee for the Office of the First Minister and deputy First Minister has been considering how it will deal with issues of subsidiarity following the ratification of the Lisbon Treaty. The committee has considered two pilot subsidiarity exercises and has also considered a number of research papers by the Assembly's Research and Library Service. At present, if a subsidiarity alert is received, it is passed to the Assembly's Research and Library Service, Legal Services and the appropriate statutory committee to be taken forward. The Committee for the Office of the First Minister and deputy First Minister acts as a post box to receive alert notifications and timings etc. The Chairpersons Liaison Group (CLG) considered the issue of training for members across a number of areas, not just subsidiarity, but as it is approaching the end of this mandate it was agreed that the new CLG may wish to return to this issue following the Assembly elections next year.

Both the Scottish Parliament and the National Assembly for Wales established a coordination mechanism with their respective regional executive.

The Scottish Parliament has agreed a process with the Scottish Government where the government will provide, on a weekly basis, the parliament with a list of legislative proposals and accompanying Explanatory Memoranda on which the Scottish Government has been consulted by the UK Government. Subsidiarity concerns will be raised and highlighted by the Scottish Government as they are identified.

Concerning Wales, at a meeting of the Assembly's European and External Affairs Committee on 4 May 2010, the First Minister for Wales undertook to provide the committee with a list of Explanatory Memoranda for European legislative proposals on which the Welsh Government has been consulted by the UK Government. It was noted that this information was to be forwarded to the committee in a timely manner within the eight-week window for raising concerns in accordance with the Protocol. The Welsh Government now forwards copies of the final EMs – containing the regional executive's views on these proposals – to the National Assembly for Wales, at the same time that the EMs are sent back to the relevant UK Government (national executive) departments for transmission to the national parliament. The EMs are sent via an e-mail inbox managed by the Assembly Members' Research Service. This provides an alert to the relevant Assembly committee(s) regarding any subsidiarity issues that have been raised by the Welsh Government on devolved matters and may require further scrutiny and/or action. This alert procedure in Wales is in addition to any subsidiarity concerns raised by the national parliament and brought to the Assembly's attention by the UK Parliamentary Committees.

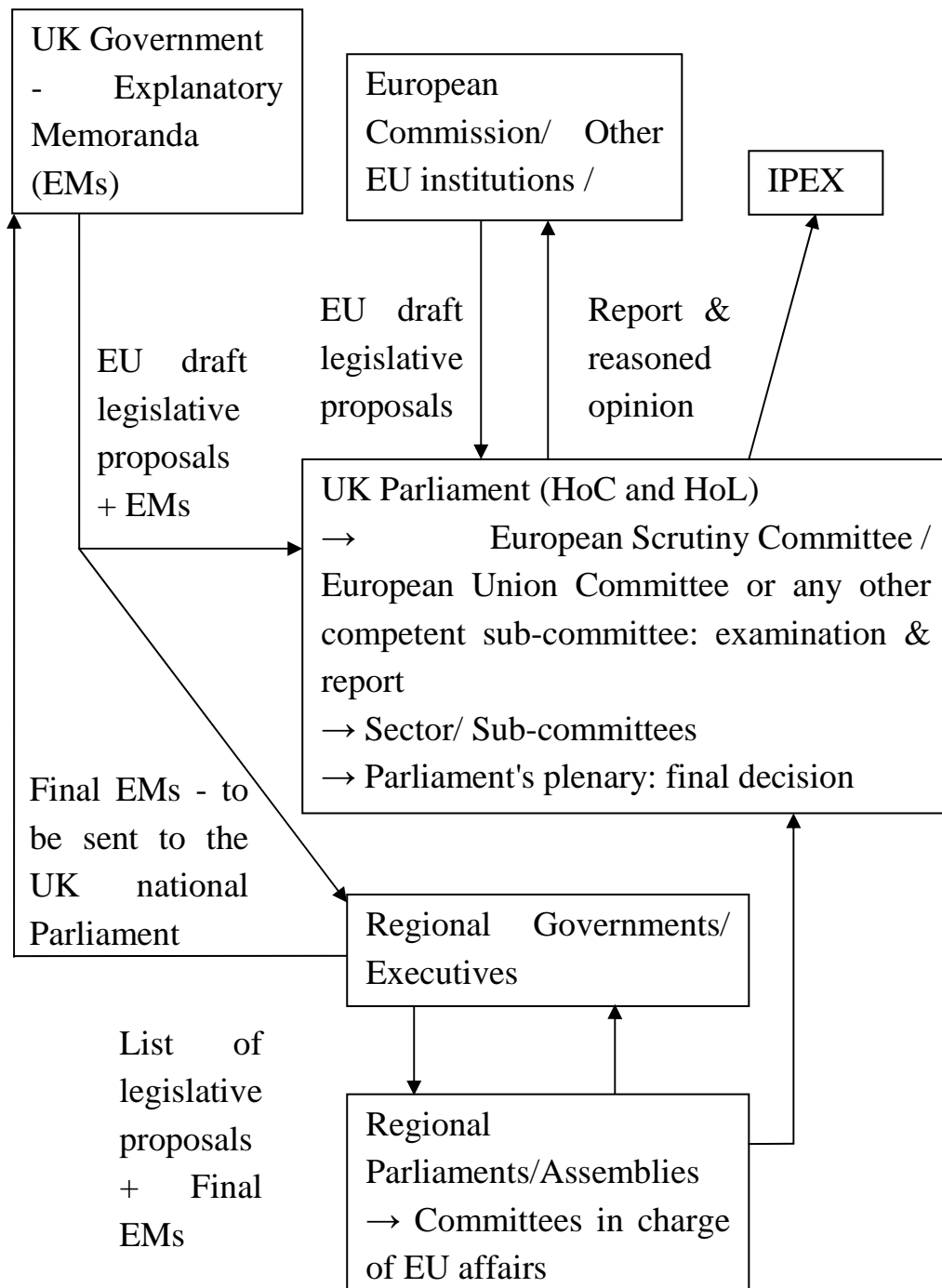
In Northern Ireland, the Committee for the Office of the First Minister and deputy First Minister recommended that the department highlight to the Committee all Explanatory Memoranda which have particular relevance to Northern Ireland including any issues relating to subsidiarity and proportionality; however, this recommendation was rejected by the ministers stating that the committee should receive these directly from Westminster parliamentary sources.

The three devolved legislatures are also open to consulting or cooperating with any non-governmental organisation, European associations, external experts or stakeholders, where considered appropriate, although it is questionable how

feasible this will be in terms of submitting a response within the time constraints of the Lisbon Treaty.

However the three devolved legislatures do not have the same line regarding the issue of establishing a specific communication procedure with the EU institutions in the framework of the EWS. For the Scottish Parliament, the European and External Relations Committee will consider sending reports by the parliament in relation to subsidiarity to the EU institutions for information. For the National Assembly for Wales, all reports by the European and External Affairs Committee are sent to Welsh MEPs and to the European Commission as a matter of course. Welsh MEPs also receive copies of all committee papers and participate in meetings of the committee. On the other hand, the Northern Ireland Assembly did not set up any specific procedure for communicating with the EU institutions.

Subsidiarity scrutiny procedure step by step in UK:



## **Filtering procedures**

Neither the HoC nor the HoL have established a procedure to “filter” EU draft legislative acts in order to decide whether it is appropriate or not to submit them to the regional parliaments. The HoL stated that it will not submit proposals to regional parliaments as it is up to regional parliaments to identify which proposals concern them and to draw their concerns to its attention. However, staff members maintain informal contact and may draw particular dossiers to the attention of regional parliaments.

The three devolved legislatures receive the EU draft legislative acts to be evaluated within the EWS via a “filtering procedure” established at the regional level to decide on their relevance for their respective regions. In Scotland, the formal procedure has not yet been agreed. In the interim, this is carried out by officials within the Committee Office, the Research Service, EU Office and Legal Service of the Parliament. In addition to this, the Scottish Government has agreed to inform the Scottish Parliament of any proposals on which it has subsidiarity concerns. In Wales, this is carried out by officials within the Members Research Service, EU Office and Legal Service. A report is prepared for each meeting of the European and External Affairs Committee. The Welsh Government has also agreed to inform the Assembly of any proposals on which it has subsidiarity concerns. In Northern Ireland, this is carried out by officials within the Assembly's Research and Library Service.

## **Human resources and capacity building**

In order to be prepared for their new tasks within the EWS, the three devolved legislatures took different measures and actions.

The Scottish Parliament's European and External Relations Committee carried out an inquiry into the implications of the Treaty for Scotland (the Scottish Government and Scottish Parliament). This included an assessment of the impact of the subsidiarity protocol. The inquiry took place during 2009/10 and reported in June 2010<sup>75</sup>. On the basis of this report, “A European Union Strategy

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<sup>75</sup> European and external relations Committee, 4<sup>th</sup> Report, 2010 (Session 3), “Inquiry into the Impact of the Lisbon Treaty on Scotland”, published by the Scottish Parliament on 23 June 2010.

for the Scottish Parliament”<sup>76</sup> has been drafted, for which a detailed plan for the development and implementation of the strategy will be in place in January 2011. The issue has been discussed at the EC-UK Forum and officials from the Scottish Parliament have met with representatives from the national parliament chambers and from the other devolved legislatures to discuss procedures.

The National Assembly for Wales' European and External Affairs Committee carried out an inquiry into the application of the subsidiarity protocol during 2008/2009. Since then the issue has been discussed with the First Minister of the Welsh Government, and between the Chair of the European and External Affairs Committee and the Assembly's Presiding Officer. Assembly officials have participated in the work of the Subsidiarity Monitoring Platform and in two seminars by the Catalanian Parliament in Barcelona (September 2009 and July 2010) for CALRE (Catalunya chairs the CALRE Working Group on Subsidiarity). The issue has also been discussed at the EC-UK Forum and officials from the National Assembly for Wales have met with colleagues from the national parliament chambers and from the other devolved legislatures to discuss procedures.

Regarding the Northern Ireland Assembly, staff within the Assembly's Research & Library Service have undertaken training and development in order to prepare, amongst other things, for the new tasks within the EWS. Research staff have been used to brief members of a number of committees on subsidiarity and related issues.

Concerning the development of their expertise in the area of subsidiarity, the Scottish Parliament and the National Assembly for Wales both draw on the combined expertise of their respective Legal Services, EU Offices in Brussels, Research Services and Committee Services to ensure that subsidiarity issues are considered appropriately. They adopted an open and inclusive approach on these issues by also making use of the formal and informal partnerships established within the UK and across Europe (including membership of CALRE) and their involvement in the CoR, to ensure that when subsidiarity issues arise they are in a position to respond to these in a timely manner. They are also looking to do

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<sup>76</sup> “A European Union Strategy for the Scottish Parliament: Recommendations from the Inquiry into the Impact of the Treaty of Lisbon on Scotland”.

this in cooperation with the Scottish/Welsh Government where this is considered proper and appropriate.

The Northern Ireland Assembly is in the process of educating all clerks, assistant clerks, Hansard staff, senior research officers and research officers on European institutions and structures, including the Lisbon Treaty and subsidiarity. A group has been established which consists of the clerk to the Committee for the Office of the First and deputy First Minister, an assembly legal advisor and a senior research officer with responsibility for European issues. The assembly has also joined the Committee of the Regions' Subsidiarity Monitoring Network.

The Scottish Parliament and the National Assembly for Wales both have an EU office in Brussels to keep members and committees informed and updated on relevant developments on the EU agenda, including an analysis of the annual work programme of the Commission, which influences the work programme of the European and External Relations Committee and part of the work of the other committees. The European and External Relations Committee for Scotland, and the European and External Affairs Committee for Wales, receive a regular formal update from the minister in charge of European affairs within the regional government. In addition to this, ministers may be called upon to provide evidence to the committee (as well as the other committees) on their work, including – where relevant – on European activities. Moreover, the European Commission's representative provides regular updates on its work and relevant policy developments, and in Wales regularly attends the European and External Affairs Committee meetings. The Northern Ireland Assembly relies on its Research and Library Service to screen the Annual European Legislative and Work Programme and to monitor the development of policy at European level.

Both Scotland and Wales consider that their respective committees in charge of European affairs play an important role within their regional parliaments in terms of monitoring new developments in the EU and taking a strategic approach to scrutinising the engagement of their governments in EU policy. Unlike Scotland and Wales, the Northern Ireland Assembly does not have a committee dealing solely with European affairs. The Committee for the Office of the First Minister and deputy First Minister is responsible for European issues along with a number of other areas.

## **Cooperation with other national/regional parliaments**

Both the HoC and the HoL will communicate with the other national parliaments through their representative based in Brussels. Regarding the HoC, cooperation will be conducted informally at official level through national parliament representatives in Brussels and formally through IPEX. Regarding the HoL, as soon as a breach of subsidiarity is suspected, the EU Liaison Officer will be informed. Informally he will notify other national parliaments, establish which might have similar concerns and maintain communication as each chamber moves towards a concluded position. Discussions will be held with a view to drawing up guidelines between all national parliaments as to when to notify other parliaments through IPEX.

The three devolved legislatures liaise closely on subsidiarity monitoring, both at official level and through the EC-UK Forum of European Committee Chairs. Indeed, the chairs of the committees dealing with European affairs in the UK, at both national and regional level, meet formally at the EC-UK Forum held every six months to discuss areas of common interest. The issue of sharing information and cooperation on EU scrutiny between institutions has been discussed and although no ‘formal mechanism’ or ‘protocol’ has been established, there is in principle an agreement that officials should cooperate and share information to ensure that subsidiarity issues can be responded to in an appropriate and timely manner. Following the UK General Election in May 2010, there has not yet been a meeting of the EC-UK Forum to discuss these issues further. The EWS is likely to be on the agenda of the next forum meeting, which will probably be in late January 2011, when a coordination mechanism may be discussed.

In addition to this, the three devolved legislatures are members of CALRE. Informal information-sharing takes place across the CALRE network, which has established a new website with a forum where members can exchange information and raise issues for discussion. The Northern Ireland Assembly has also joined the CoR SMN.

Moreover, the Scottish Parliament and the National Assembly for Wales potentially see a need for closer cooperation with regional parliaments in other Member States on issues regarding which shared concerns exist across different parts of the EU. Concerning the Northern Ireland Assembly, the Committee for



the Office of the First Minister and deputy First Minister recommended that it establish links at the appropriate level with various regional assemblies with legislative powers and national parliaments in Europe on issues of common interest and will encourage other statutory committees to do likewise.

### **Visibility/access to the results of the subsidiarity analysis**

The HoC indicated that all work carried out by the European Scrutiny Committee, including subsidiarity analysis, is published in regular scrutiny reports and ministerial statements. Government explanatory memoranda are also publicly available. Any reasoned opinions will be considered publicly on the floor of the HoC. The EU institutions will be informed of any concerns raised by the HoC.

The HoL considers that its subsidiarity scrutiny procedures are transparent and accessible to the public, and that the results of the latter will have sufficient visibility *vis-à-vis* the EU institutions and other Member States' national parliaments. Moreover, the process of subsidiarity scrutiny will be made even more visible (e.g. by adjustments to the web pages or the Progress of Scrutiny document). In addition, all subsidiarity reports will be translated into French and translations posted on the web pages.

The Scottish Parliament and the National Assembly for Wales point out that all committee correspondence and discussion on issues where a subsidiarity concern is raised will be made publicly available. The parliament/assembly has a commitment to transparency and openness – committee meetings are held in public and official documents are published on the internet and are in the public domain. The Northern Ireland Assembly stresses that it is an open and transparent organisation and publishes a vast amount of information on its website. Committee meetings are held in open session broadcast over the internet, and minutes of proceedings, minutes of evidence, etc. are published on the internet and are fully accessible to the public. Consequently, all three of them consider that subsidiarity analysis will have sufficient visibility *vis-à-vis* regional parliaments with legislative powers in other Member States, the UK Parliament, the other Member States' national parliaments and the EU institutions.

## **Cooperation between the UK Parliament and the devolved legislatures**

### **Transmission of EU draft legislative acts**

Both the HoC and the HoL indicated that there is no mechanism for the transmission of EU draft legislative acts to regional parliaments. According to the HoL, Article 6 of Protocol n°2 is permissive. Thus, if a potential subsidiarity issue is detected, some or all of the devolved parliament/assemblies may be alerted informally at staff level, on a case-by-case basis.

### **Time limit for expressing regional opinion(s)**

The HoC indicated that the regional parliament/assemblies must express their position(s) on EU draft legislative acts to it within the eight-week period, whilst underlining that the earlier the better. Regarding the HoL, no time limit has been set for the regional parliaments to express their position(s). However, the latter have been advised to bear in mind that the HoL will be able to take more account of their views if they are submitted in good time.

### **Taking the regional opinion(s) into account**

The HoC specified that coordination at the national level regarding the regional parliaments' work - when their interests are at stake in an EU legislative act - can be achieved through regular meetings of the abovementioned EC-UK Forum bringing together the UK's European Committee Chairs. Moreover, there is regular exchange of information at official level, including through representatives based in Brussels. The HoC will consider the regional parliaments' position(s) in their subsidiarity analysis as part of the usual process for considering documents carried out by the European Scrutiny Committee to which the devolved legislatures should address their concerns. The final decision on the reasoned opinion is to be taken by the HoC acting on a recommendation by the European Scrutiny Committee. However, it will not consider the positions of European associations of regional and local authorities when performing the subsidiarity analysis.

The HoL underlined that in the UK, there is no mechanism as such at the national level to coordinate the devolved legislatures' subsidiarity work. However, the House will consider their views as part of the normal scrutiny process in the EU Committee. On one hand, the HoL EU Committee has expressed its intention to ensure that the European committees of the devolved legislatures are consulted where any subsidiarity issues are picked up by its own filtering process for proposals in areas of devolved competence<sup>77</sup>, as it did during the eighth COSAC subsidiarity test.<sup>78</sup> On the other hand, it has also invited the European Committee of the Scottish and Welsh devolved legislatures to alert it to any proposals, at any stage in the policy-making and legislative cycle, where they feel that there are subsidiarity or proportionality issues of which the HoL should be aware. This arrangement was planned to be extended to the Northern Ireland Assembly once restored<sup>79</sup>.

Moreover, when performing the subsidiarity analysis, European associations of regional and local authorities, such as REGLEG and CALRE, are also welcome to submit their views to the House – in the same way as any other body or individual. However, it has been underlined that the HoL itself must take the final decision.

The three devolved legislatures underlined that at the present time, neither a formal cooperation or coordination procedure with Westminster or one of its chambers, nor a formal procedure to consult them has been established. However, when the HoL EU Committee alerted the regional parliaments to a possible subsidiarity issue in October 2010 it was very clear about the deadline by which they had to respond. Following that, the Scottish Parliament and the

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<sup>77</sup> “If a potential subsidiarity issue is detected, some or all of the devolved assemblies may be alerted, at staff level, on a case-by-case basis”. Document from the House of Lords: How will the Lords EU Committee operate these new powers?

<sup>78</sup> According to the European Union Committee of the House of Lords, the European and External Relations Committee of the Scottish Parliament was unable to consider the matter within the timetable set; the Welsh Assembly responded that they were content to leave the response to the Lords as succession is not currently a devolved matter; and the Northern Ireland Assembly considered the proposal but had no comment to make. See COSAC report of May 2010 pp 9-10 and Annex p. 197.

<sup>79</sup> The Northern Ireland Assembly was suspended at midnight on 14 October 2002. Power was restored to the Northern Ireland Assembly on 8 May 2007. See: <http://www.parliament.uk/about/how/role/devolved/devolved/devolved/>. When the assembly was suspended, its powers reverted to the Northern Ireland Office. Following talks that resulted in the St Andrews Agreement being accepted in November 2006, an election to the Assembly was held on 7 March 2007 and full power was restored to the devolved institutions on 8 May 2007. See: [http://en.wikipedia.org/wiki/Northern\\_Ireland\\_Assembly](http://en.wikipedia.org/wiki/Northern_Ireland_Assembly).

National Assembly for Wales have both formally written to the chairs of both European Committees in Westminster requesting more formal arrangements.

### **Differing points of view at national and regional levels**

In the event of differing points of view between the national and regional levels, the HoC underlined that the provision in the protocol applies solely to national parliaments so the HoC will have the ultimate say. Similarly, the HoL pointed out that it is under no obligation to agree with the concerns raised by a regional parliament.

The three devolved legislatures confirmed that it is up to the national parliament to submit the final reasoned opinion. Nevertheless, prior to the UK General Election in May 2010, both the chairs of the HoC and the HoL European Committees had agreed to pass on the views of regional parliaments/assemblies on any subsidiarity issue to the UK Government, even if they did not agree with their views. Following the May 2010 election, Lord Roper, the Chair of the EU Select Committee in the HoL, has been re-appointed and stated that regional parliaments/assemblies will be alerted at staff level if any subsidiarity issues are picked up. However, the Commons European Scrutiny Committee has appointed a new chair, Bill Cash MP and at time of writing it was not known whether the approach taken by the committee in the previous parliament would continue. This will be discussed further at the next EC-UK Forum meeting in January 2011.

### **Follow-up/feedback from the national parliament**

The HoC specified that it will report to/inform the devolved legislatures on its final reasoned opinion on the compliance of a legislative proposal with the principle of subsidiarity at official level. The same answer was provided by the HoL: any feedback/follow-up will be done only in an informal way at staff level.

### **Does closer cooperation need to be developed?**

The Scottish Parliament and the National Assembly for Wales consider that good cooperation between regional and national parliaments will ensure that

consultation takes place at the appropriate level of legislative competence and is respected in the assessment on subsidiarity. Both have a strong and established working relationship with the HoC and HoL based on mutual respect of the areas of responsibility of each institution. Similarly, the Northern Ireland Assembly underlined that it has a long relationship of working closely with the other devolved parliament/assembly and the UK Parliament.

Synoptic table: The enforcement of the Early Warning System in the United Kingdom

	National level		Regional level
Procedures followed by the national parliament and the regional parliaments			
	House of Commons	House of Lords	Devolved legislatures
Subsidiarity scrutiny procedures	No specific subsidiarity scrutiny procedures. The general scrutiny procedure for all types of EU documents applies.	Sifting and scrutiny procedures adapted to the EWS.	Procedures to put in practice the EWS are discussed at the regional level. In general, revision of the rules of procedure of the devolved legislatures will be necessary. They should be voted/endorsed in 2011.
Filtering procedures	None	Yes	Filtering procedure
Human resources and capacity building	-	-	Preparations for the new tasks of the EWS (inquiry, training, etc.). Development of subsidiarity expertise. Good access to EU information (Brussels offices, cooperation with the regional government/executive, etc).
Cooperation with other national/regional parliaments	Informally at official level through the national parliament representatives in Brussels and formally through IPEX.		The three devolved legislatures liaise closely on subsidiarity monitoring, both at official level and also through the EC-UK Forum of European Committee Chairs.

			<p>The three are members of CALRE.</p> <p>The Northern Ireland Assembly is a member of the CoR SMN.</p> <p>Potential closer cooperation with regional parliaments in other Member States, when issues of common concern.</p>
Visibility/access to the results of the subsidiarity analysis	<p>Subsidiarity analyses are published in regular scrutiny reports and ministerial statements.</p> <p>Government explanatory memoranda are also publicly available.</p> <p>The EU institutions will be informed of any concerns raised by the House of Commons.</p>	<p>The process of subsidiarity scrutiny will be made even more visible, e.g. by adjustments to the web pages or the Progress of Scrutiny document. In addition, all subsidiarity reports will be translated into French, and the translations posted on the web pages.</p>	<p>Commitment to transparency and openness.</p> <p>All EU committee correspondence and discussion on an issue where a subsidiarity concern is raised will be made publicly available (especially publication on the website).</p> <p>EU Committee meetings are held in public.</p>
Cooperation between the national parliament and the regional parliaments			
	House of Commons	House of Lords	Devolved legislatures
Transmission of EU draft legislative acts	<p>No formal mechanism for the transmission of EU draft legislative acts to regional parliaments – can be done informally.</p>		<p>Confirmed by the three devolved legislatures.</p>

Time limit for expressing regional opinion(s)	Within the eight-week period, the earlier the better.	No time limit – but any contribution to be submitted in good time.	No defined time limit for expressing their position(s) to the UK Parliament.
Taking the regional opinion(s) into account	The regional parliaments' position(s) in their subsidiarity analysis as part of the usual process for considering documents carried out by the European Scrutiny Committee, to which the regional parliaments should address their concerns.	The views of the regional parliaments will be considered as part of the normal scrutiny process in the EU Committee.	Request for more formal arrangements.
Differing points of view at national and regional levels	The HoC has the final say.	The HoL has the final say.	It is up to the national parliament to submit the final reasoned opinion.
	Prior to the UK General Election in May 2010, both the Chairs of the HoC and the HoL European Committees had agreed to pass on the views of regional parliaments/assemblies on any subsidiarity issue to the UK Government, even if they did not agree with their views. Following the election, it is not known whether this approach will continue to apply. This will be further discussed at the next EC-UK Forum meeting (January 2011).		
Follow-up/feedback from the	Will only be done in an informal way at staff level.		-



national parliament			
Does closer cooperation need to be developed?	-	-	Good cooperation between regional and national parliaments will ensure that consultation takes place at the appropriate level of legislative competence and is respected in the assessment on subsidiarity.



### **3. With the EWS, a new role for national parliaments of the European Union and regional parliaments with legislative powers?**

To answer this question, it is necessary to go back to 1992 (Maastricht Treaty, entered into force in 1993) to witness the early start of subsidiarity and proportionality scrutiny. The formalisation of quite a long-standing practice in some Member States by the Lisbon Treaty offers the opportunity to examine closely the mechanisms developed to implement the EWS in the eight Member States with regional parliaments with legislative powers. The already long-standing informal practice of early scrutiny of subsidiarity compliance contrasts with the scant research so far carried out on regional parliaments' adaptation to their new responsibilities resulting from the EWS. It should be borne in mind that the frameworks specifically developed to assess the role of the national parliaments regarding subsidiarity scrutiny of EU draft legislative acts have their limitations when applying to regional parliaments with legislative powers.<sup>80</sup> Parliamentary engagement over subsidiarity issues varies from one Member State to another, as well as from one region to another<sup>81</sup>.

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<sup>80</sup> See Carter and McLeod (2005) 69 and Carter (2006) Chapter 4 in Kiiver Ed "National and Regional Parliaments in the European Constitutional order".

<sup>81</sup> See the European Scrutiny Committee of the House of Commons (UK) in its 33rd Report, Session 2007-08, where divergent opinions on the effect of the EWS are discussed by – among others – Professor Hix and MEP Richard Corbett.

### ***3.1. Perception of the EWS at the national and regional levels***

Various perceptions have been expressed by the parliaments interviewed regarding the EWS.

#### **The EWS is in general perceived positively by the parliaments**

*At the national level:* The Austrian and German legislative bodies at federal level expressed their appreciation of the new instrument to conduct subsidiarity scrutiny and they find it a suitable way to ensure their influence and political control with a view to overseeing the correct application of the subsidiarity principle in EU legislation. They welcome particularly the embedding of the procedure into the Treaties. In the same vein, the House of Lords welcomes such a move as it will attach greater importance to the involvement of national parliaments in monitoring subsidiarity and supports the EWS as a means to achieve this closer relationship.

*At the regional level:* Overall the new system is received positively and the parliaments that have responded to the survey find it an appropriate answer to regional demands for better access and more scrutiny rights on EU legislation. The perception is that the EWS will contribute substantially to the democratic legitimacy of the EU and its actions, and it is an important mechanism with which to safeguard the transparency and efficiency of European law-making. The Scottish Parliament and the National Assembly for Wales see the EWS as a positive development, giving formal recognition for the first time in the Treaties to the role of regional parliaments in the subsidiarity monitoring process<sup>82</sup>. The Italian regional view *vis-à-vis* the EWS is also generally positive: it is considered an important instrument to ensure better participation by the national and regional parliaments in the EU legislative process (Abruzzo, Bolzano, Calabria, Emilia-Romagna, Lazio, Lombardy, Marche and Trento). In Spain,

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<sup>82</sup>The Northern Ireland Assembly Committee responsible for coordination of EU issues has yet to take a position on this matter, therefore the Assembly has not yet considered the issue.

there is a generally positive perception of the Lisbon Treaty's provisions, due to the shared awareness of the importance attributed to the participation of national and regional parliaments with legislative powers in the European legislative-making process.

For some parliaments the EWS does not constitute a major change.

This is the case, at both national and regional levels, for the Finnish Parliament and the Åland Parliament, as well as the British House of Commons.

According to the Finnish Parliament, the EWS is a “largely illusory political process”<sup>83</sup>. “(1) the Lisbon Treaty does not in reality provide any new tasks; parliaments have always had access to the information provided by the treaty and the ability to address national governments and EU institutions on the issues raised; (2) subsidiarity, although important as a principle, is in practical political terms less important than the substance of European proposals; the treaty does not make any provision for national parliaments to express themselves on substantive issues; (3) the treaty definition of 'subsidiarity' is so narrow as to render the concept almost meaningless”. The Finnish Parliament considers that the already existing Finnish scrutiny procedure exceeds the EWS as its subsidiarity check will continue to apply to both EU legislative proposals and non-legislative proposals; whereas the EWS concerns solely EU draft legislative acts. According to the latter, the EWS provisions add only two new elements: “(1) the Eduskunta can address any objections directly to the author of the proposal, and not just to the Council through the Finnish Government, as now; (2) in addition to the current average of 90-100 U-matters [EU legislative proposals] per year, the Eduskunta will receive potentially hundreds of proposals that in Finnish practice would have been delegated to the government or the administration as not requiring parliamentary input. This number may be smaller if the EU makes greater use of the option to delegate legislation to the Commission”.<sup>84</sup> This official view of the Finnish Parliament on the EWS procedure is reflected in the legislation implementing the Lisbon Treaty<sup>85</sup> and the subsequent implementing enactments. The Åland Parliament shares this

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<sup>83</sup> “Improving EU Scrutiny”, Report of the Committee to assess EU scrutiny procedures, Eduskunnan Kanslian Julkaisu 4/2005, p. 23.

<sup>84</sup> “Improving EU Scrutiny”, Report of the Committee to assess EU scrutiny procedures, Eduskunnan Kanslian Julkaisu 4/2005, p. 36.

<sup>85</sup> Finnish Parliament's Rules of Procedure and the Rules of Procedure of the Parliament's Grand Committee amended on 1 December 2009.

opinion as, under existing law and European scrutiny procedure, the national parliament can already instruct it to present a view that becomes part of the Finnish national position (on both the subsidiarity and proportionality principles).

According to the British House of Commons, the substance of the subsidiarity article in the Lisbon Treaty is the same in its effect as the former article. Thus, it doubts whether the EWS will make much practical difference to the influence presently enjoyed by the UK Parliament<sup>86</sup>, especially due to the fact that examining whether EU proposals comply with the principle of subsidiarity has been part of the UK scrutiny process ever since the principle was introduced in 1993. In the same vein, the British Government underlined that, before the implementation of the Lisbon Treaty, subsidiarity was already being scrutinised as it has already been taken into account by both the Commission and Member States.<sup>87</sup>

### **Other parliaments are cautious**

*At the national level:* The German Bundestag and Bundesrat expressed their concern that the new EWS will certainly result in a greater workload, especially at committee level, where the actual subsidiarity analysis takes place. The Spanish Cortes believes the system will not be much used, since the monitoring of the content of a proposal is excluded, and subsidiarity problems have proven to be rather scarce.

*At the regional level:* For some Spanish regions it is still very early in the implementation phase of the EWS to detect its real potential. Others expressed a need to provide specific criteria and procedures to participate effectively at the regional level. Some Italian regions underline that problems could arise with

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<sup>86</sup> House of Commons, European Scrutiny Committee, “Subsidiarity, National Parliaments and the Lisbon Treaty: Government Response to the Committee's Thirty-third Report of Session 2007-08”, First Special Report of Session 2008-09, HC 197, published on 26 January 2009 by authority of the House of Commons. See paragraph 37 last indent. “In our experience it has been rare for the entirety of a proposal for legislation to be inconsistent with the principle of subsidiarity. We do not therefore expect frequent use to be made of the yellow and orange cards. Indeed it would be surprising if the mere existence of such provisions gave rise to a growth in the number of well-founded subsidiarity cases; it might even give the impression of a lack of focus on subsidiarity concerns in the past”. Ref: UK – House of Commons European Scrutiny Committee - Sixth Report - The Work of the Committee in 2008-09: <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmeuleg/267/26703.htm#note9>.

<sup>87</sup> See the Appendix “Government response attached to the First special report”, especially regarding paragraph 37.

regard to the long legislative procedure of scrutiny, and more specifically to the number of EU proposals received (Bolzano, Friuli-Venezia Giulia, Molise, Sicilia and Tuscany). The eight-week time limit is also considered too short and strict. The Parliament of Saarland complained about excessive workload and flow of EU-related documents even before the introduction of the EWS.

### ***3.2. The EWS: a controversial novelty of the Lisbon Treaty***

The Lisbon Treaty offers a reinforced role to the national parliaments in safeguarding the subsidiarity principle, as well as to the regional parliaments with legislative powers – but for the latter at the discretion of the national parliaments, except for Belgium. Some academics had already suggested during the years pre-Lisbon that “the early-warning mechanism” — the yellow and orange card procedures — will significantly enhance the role of national parliaments in the EU decision-making machine. This was expressed among others - by Professor Dashwood at the House of Commons (UK) in 2007<sup>88</sup>: “... *the use of the early warning mechanism would have “a real impact on the political dynamic within the Community” ...if there were a significant number of national parliaments which took the view that a proposal infringed the principle of subsidiarity: “that is bound to have an impact on the prospect of the measure being adopted, whichever of the procedures applies. I think it would also make a difference ... to any proceedings that might eventuate in the Court of Justice [of the European Union] ... .”*

The Commission, Council and European Parliament are still the key actors when deciding on a given proposal. Apparently, the only thing the national parliaments can really do is to ask the respective legislative initiator to reconsider its proposal and/or better explain subsidiarity compliance. But – sharing the opinion of Professor Dashwood - if there were a significant number of national parliaments which took the view that a proposal infringed the principle of subsidiarity, it would have an impact on the prospect of the measure being adopted, whichever of the procedures applies.

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<sup>88</sup> See the European Scrutiny Committee of the House of Commons (UK) in its 33rd Report, Session 2007-08

Many expectations have been built around the insertion into the EU Treaties, for the first time, of an explicit mention of the role of the regional parliaments. However, caution is needed when analysing the real impact of Article 6 of Protocol n° 2. As the House of Lords' analysis recalls, this provision does not oblige national parliaments to consult the regional assemblies. It is on the contrary "permissive"<sup>89</sup>; nevertheless, some Member States adopted internal provisions in order to exceed the Treaty (AT, BE, DE, see point 2.1 of this report).

However the fact that the Lisbon Treaty opens up the possibility of involving regional parliaments with legislative powers at the discretion of the national parliaments does not necessarily give a new regional dimension to EU policy-making. Therefore, since the entry into force of the Lisbon Treaty and with regard to the ongoing work to implement it, the initial enthusiasm and expectations seem to diminish in parallel to the growing awareness of the numerous conditions set within the EWS:

Consultation of regional assemblies is carried out only if the national parliament considers it "appropriate";

Protocol n° 2 states that the consultation will only be on subsidiarity compliance (and not on proportionality);

Consultation will only be about draft legislative acts (excluding therefore non-legislative EU initiatives);

Time allowed to prepare a position on subsidiarity compliance is short, necessarily shorter than for the national parliaments since the latter are the actual recipients of the regional positions and they need time to consider them before the end of the eight-week time-span;

Once the position of the regional parliament is transmitted, the national parliament will consider whether or not to take it into account in its final opinion.

Consequently, the work of regional assemblies will have a real impact only if it is backed by the national parliaments and if the threshold of votes is attained. Yet even in this case, there is no guarantee that the Commission will change its initial proposal. Thus, the current subsidiarity scrutiny procedures might

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<sup>89</sup> "House of Lords How will the Lords EU Committee operate these new powers?" to be found in <http://www.parliament.uk/documents/lords-committees/eu-select/subsidiarity/use-new-powers.pdf>.



discourage regional parliaments from contributing to the EWS as the visibility and efficiency of their work is not really ensured.

On the other hand, the new role of regional parliaments in the EWS should not be underestimated. The extension of EU competences into new areas with the Lisbon Treaty might create new possibilities for subsidiarity disputes. Indeed, the territorial chambers and bodies directly representing the regions (AT, BE, DE) – being part of the national parliamentary system – get one vote with the EWS, granting them for the first time a direct weight in subsidiarity scrutiny of EU legislative proposals. Yet this is not the case for the territorial chambers which do not in reality act as a territorial upper house, such as the Spanish Senate.

### ***3.3. Challenges to be faced by the regional parliaments with legislative powers***

In general, based on the overall analysis of the questionnaire results, **three main challenges** can be highlighted which affect all the regional parliaments interviewed.

Firstly, the need to adopt a new way of handling EU affairs in line with the “European subsidiarity culture”, regional parliaments being aware of the importance of their role in subsidiarity scrutiny. Secondly, regional parliaments need to be selective in their choices of EU draft legislative acts to be checked. To do so, most of the regional parliaments are already making use of networks and representatives in Brussels. This practice will need to go along with both internal and international coordination mechanisms to share common concerns. Thirdly, early examination of the EU draft legislative acts is necessary due to the short eight-week time limit. Whenever a specific proposal is highlighted as being potentially contentious, regional parliaments should deal with it as soon as their language version is available. This is currently the practice in some regional parliaments in the countries studied (AT, DE, FI, UK) but not in others (ES, IT, PT).

Here again it is important to distinguish between the different types of regional assemblies with legislative powers and the related varied typology of political culture. Following the findings reflected in Chapter 2 of this report, three models for conducting subsidiarity scrutiny within the EWS framework could be distinguished<sup>90</sup>:

- High level of willingness/interest shown in scrutinising subsidiarity but low level of capacity, tradition or behavioural adaptation (ES, IT);
- Low level of willingness/interest shown in scrutinising subsidiarity, regardless of a high level of capacity, tradition and adaptation mechanisms in place (FI, UK);
- A balanced equilibrium between the willingness/interest and the capacity to perform subsidiarity scrutiny (AT, BE, DE).

Such a typology coincides with the different countries' public opinions (more or less integration-friendly), stronger or weaker parliamentary oversight practice over European affairs at the national level, political calls by the sub-state level to have a bigger say in the EU decision-making process and how seriously the subsidiarity principle is taken.

It also demonstrates the gap between the central level and the regional level, as well as between the government and the parliament at both levels. It is highlighted in Chapter 2 that the role played by the executive (both at the central and regional levels) varies greatly, with a direct effect on the involvement of the regional assemblies in the EWS. For example, the federal states have established at national level systems of coordination and exchange of information between the executive and the legislative which facilitate the work of the chamber/body representing regional interests.

Lastly, such a typology reflects the different relations between the national parliaments/chambers and the regional parliaments, between the parliaments and their respective executive, and finally with the European institutions. As far as

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<sup>90</sup> Portuguese regional assemblies are not considered, since no answers to the questionnaire were provided by them.

international cooperation is concerned, engaging direct cross-border dialogues is perceived as a natural development or as a way to circumvent internal marginalisation. For example, in the federal states (AT, DE) there is no legally binding time limit for regions to send their position(s) to the national parliament due to their common understanding of what defines fruitful cooperation. In those countries there is also a long-standing tradition of close cooperation between parliaments (both at the central and regional levels) with the executives and the EU institutions. In contrast, the Spanish four-week time limit for the regional parliaments to send their contribution(s), legally binding and with pre-determined consequences, opens the floor to a new period of cooperation that should be further developed.

### **Various measures could be taken to cope with these three challenges.**

For the first challenge: increasing regional parliaments' capacity-building through training and raising awareness of the real scope of the EWS and the need for coordinated action. Promoting cultural adaptation to the new mechanisms available and promoting engagement with different good practices and existing networks.

For the second challenge: analysing the real importance for the regional level of the role conferred by the Lisbon Treaty. Distinguishing between national and regional perception. Studying the potential tools at regional level which can give them greater say in EU decision-making. Engaging in a real collective scrutiny system and/or collective subsidiarity dialogue. Becoming aware of the importance of parliamentary engagement in the EU pre-legislative process (see part 4 on the SMN and its territorial Impact Assessment consultation).

For the third challenge: providing adequate coordination mechanisms inside and outside national borders. Using the mechanisms at hand (if necessary on a case-by-case basis) as described for the first and the second challenge.

Thus the challenges for the regional parliaments, based on their specific characteristics and traditions, are to enhance the possibilities stressed by the EWS either to build adequate capacity for a proper scrutiny, to use the existing ones effectively in coordination with other regional parliaments and to enhance

the potential for cooperation with their respective executive and national parliament, all in order to enhance their visibility as players in the decision as to whether an EU legislative proposal complies with the principle of subsidiarity.

### ***3.4. Best practices***

The survey has detected what could be classified as best practices, from which some recommendations will be drawn at the end of the report.

#### **Adequate “subsidiarity check” preparedness**

Various legal procedural and organisational adaptations have been made by different regional parliaments that could be classified as good practices and might be applicable to other regional parliaments:

#### **Legal/constitutional reforms**

Embedding the EWS into regional constitutions (DE);  
Concluding or amending the existing agreements of cooperation between the executive and the legislative.

#### **Procedural measures/reforms**

Assigning the scrutiny to one committee (The EU affairs committee);  
Establishing cooperation among the different committees involved in subsidiarity scrutiny.  
Imposing deadlines for the different phases of the procedure, especially with regard to the exchange of information with the executive (DE).

#### **Filtering procedures**

Some national parliaments have decided to communicate all EU legislative proposals to the regional level without any filtering procedure. This can be understood in two ways:

It is plausible that the central level does not prevent the regional level from analysing all EU legislative proposals as a sign of respect for the autonomy of the regional assemblies: it is for them to filter which proposals they are going to scrutinise.

On the other hand, a lack of filtering at central level makes it very difficult for the regional parliaments to deal with the huge amount of documents coming from Brussels, preventing them from being able to monitor efficiently unless they themselves create an effective filtering system. Some regional parliaments already have experience in analysing the Commission work programme at an early stage, especially by pre-selecting the relevant key dossiers to be closely studied. Such a practice could be generalised as a good practice, although the regional chambers will still need effective early filtering systems, shared vertically and horizontally.

Subsidiarity analyses performed by the executive branches, and those performed by parliaments in other countries, prove to be very useful (see below the right of full information). In the case of the Flemish Parliament, the European office is in charge of filtering EU draft legislative proposals. In any case, the need for a filtering system goes together with the need for tight multilevel cooperation among parliaments at all levels.

### **Right of full information**

Here, those federal states analysed as best practices regarding the right to full information could be identified. For instance, Austria changed its constitution to adapt the rules of procedure of its national parliament; both chambers are now able to enjoy their rights of full information:

1. - for every EU legislative proposal the competent ministry is obliged to provide both chambers with all relevant information “including a subsidiarity analysis”.
2. - for every calendar year a competent ministry makes available to the parliament the list of envisaged legislative initiatives according to the Commission work programme.

This could be applicable to other countries where this practice does not exist.

## **Relations between the executives and the legislatives**

It appears from the constitutional setups of the various countries studied and from the survey results that regional parliaments might have difficulties in conducting subsidiarity checks:

1. - In the light of scarce time and resources, it might make sense for a region as a whole to maximise input by letting the regional government assist them, performing a political filter, or in any case conducting a continuous practice of cooperation. When checking the relations between the regional executive and the regional legislative in our survey, there were no formal procedures: only supporting tasks are envisaged (AT). Yet close cooperation is seen as essential in DE (this cooperation is consolidated; now it only adds a new task to the existing working practice). The Conference of Presidents of regional parliaments also proves to be an effective tool for horizontal exchange of information and coordination of the work of the regional parliaments (AT, ES).

2. - One could also consider the advantages of informally<sup>91</sup> submitting the regional opinion directly to the national government, rather than the national parliament, the Commission directly, the Council presidency directly, the parliaments and governments of other Member States, especially neighbouring ones with which close ties exist, the European Parliament directly, and individual MEPs, especially the rapporteur and MEPs elected in the relevant region where applicable<sup>92</sup>. In that way regional opinions would reach the national executive directly, which in turn sits on the Council. The same goes for a dialogue with Brussels institutions which is already carried out by regional representations in Brussels. In Spain, the choice of a regional parliament, for instance, would be in line with the above, to have four weeks to talk to the Cortes or eight weeks to contact the EU legislator itself, and even more time to talk to other relevant actors. Therefore the added value of the EWS for regional parliaments could be called into question, unless real common inter-parliamentary work is performed in a truly effective and visible way.

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<sup>91</sup> This informal action would be outside the legal framework of the Treaties and also national legislation.

<sup>92</sup> Following the peer review of this report as presented by the reviewer Philipp Kiiver. Associate professor Maastricht University.

For instance, it is a constitutional tradition in Germany that the regional governments are responsible for representing regional positions and interests at the federal level, and not their parliaments. None of the German regional parliaments interviewed expressed concerns as to the legitimacy and/or efficiency of their system of representation.

### **Horizontal and vertical cooperation among parliaments**

Regarding the cooperation mechanisms established with the national parliaments and with other regional parliaments, there is no clear structure yet and no best practice has been detected. Thus, it would be advisable to structure and institutionalise such cooperation. An interesting proposal derived from the survey is the possibility of establishing a sort of IPEX designed for and dedicated to the regional assemblies' needs.

### **The CoR SMN as a facilitator for exchanging best practices**

In addition to its potential role in supporting regional parliaments with legislative powers for each of these areas (filtering, circulating information, strengthening cooperation)<sup>93</sup>, the CoR SMN could have an important role to play here as a facilitator for exchanging best practices between the regional parliaments with legislative powers. This is crucial at the present time when the latter are currently preparing the necessary measures to implement the Lisbon Treaty provisions on subsidiarity and more particularly on the EWS. It would also help to give more visibility to these best practices, making them more accessible to the SMN partners and to the general public.

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<sup>93</sup> See Part 4 of this report.





## 4. Optimisation of the CoR Subsidiarity Monitoring Network

The CoR considers the principles of subsidiarity and proportionality as the cornerstones of the EU multilevel governance model. The Treaties providing for decisions to be taken at the level closest to the general public, the principle of subsidiarity should thus be understood as the basis for greater responsiveness to citizens' needs by all levels of governance and improved efficiency in decision-taking.<sup>94</sup> During its meeting in Dunkirk in September 2008, the Bureau reaffirmed that the CoR is committed to integrating subsidiarity into all its political processes and underlined the importance of the CoR Subsidiarity Monitoring Network (SMN) in achieving this objective.<sup>95</sup>

### *4.1. The Subsidiarity Monitoring Network (SMN)*

#### **Membership**

Membership of the SMN is voluntary. Since 2007, the number of partners has been constantly growing: 48 in April 2007, 87 in September 2007<sup>96</sup>, 96 in September 2008<sup>97</sup> and 109 in 2009. On 16 February 2011, the SMN had 126 partners: parliaments or assemblies representing regions with legislative powers; governments or executives representing regions with legislative powers; local or regional authorities without legislative powers; associations of local/regional authorities; CoR national delegations as well as national parliaments.

At the end of 2010, the CoR launched for the first time a targeted call for SMN membership application towards regions with legislative powers. A co-signed letter from the CoR President and First Vice-president was sent to the heads of the relevant regional parliaments and governments. The aim is to set up a sub-group for regions with legislative powers in order to allow for more specific

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<sup>94</sup> CdR 199/2009 fin, point 6.

<sup>95</sup> R/CdR 196/2009 pt 8 a).

<sup>96</sup> R/CdR 150/2007 pt 11.

<sup>97</sup> R/CdR 229/2008 pt 8 b).

support from the SMN to the latter, especially with regard to the new Lisbon Treaty provisions on subsidiarity and the EWS.

## Objectives

After a testing period, the SMN has been fully operational since April 2007 and pursues different aims:

- raising awareness of the practical application of the subsidiarity and proportionality principles;
  - enabling local and regional authorities to play a political role in monitoring the implementation of the subsidiarity and proportionality principles;
- keeping CoR rapporteurs and members abreast of input related to subsidiarity and proportionality emanating from a representative network of local and regional players;
- identifying measures for better law-making, cutting red tape and increasing acceptance of EU policies by EU citizens.<sup>98</sup>

In its opinion on the Better Law-making Package 2007-2008<sup>99</sup>, the CoR underlines that the SMN is a useful tool for raising awareness with regard to subsidiarity, not only because of the partners' engagement in subsidiarity monitoring but also in view of its potential to act as a laboratory for the exchange of best practices in the application of subsidiarity and multilevel governance.<sup>100</sup>

Regarding participation in the EU legislative process, the input from local and regional authorities, as SMN partners, is used by CoR rapporteurs for the preparation of draft opinions. Opinions are the main tool through which the CoR raises concerns regarding subsidiarity and proportionality issues. This may also be useful in case of referral to the CJEU.<sup>101</sup> Since the Bureau decision of September 2008, CoR opinions contain, if necessary, a part on compliance with the subsidiarity and proportionality principles. This Bureau decision was

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<sup>98</sup> See <http://www.cor.europa.eu/pages/EventTemplate.aspx?view=folder&id=66e2c45b-37a2-4598-a645-11d7fc19f462&sm=66e2c45b-37a2-4598-a645-11d7fc19f462>. R/CdR 229/2008 pt 8 a).

<sup>99</sup> CdR 199/2009 fin.

<sup>100</sup> CdR 199/2009 fin, point 7.

<sup>101</sup> R/CdR 229/2008 pt 8 a).

formally endorsed by the revised CoR Rules of Procedure in 2010, and especially Rule 51(2)<sup>102</sup>. Consequently, a part on "Subsidiarity, proportionality and better regulation" is now included in the political analyses drafted by the CoR commission secretariats to support the rapporteurs when drafting opinions. If the rapporteur agrees, the analysis may be published on the SMN website.

The SMN can also be seen as a 'facilitator' for exchanging information between different entities at the local, regional and European levels but also with national parliaments or chambers of national parliaments. All in all, the SMN aims to foster a common understanding of subsidiarity.

Moreover, to give a face and a new impetus to the SMN, Ramón Luis Valcárcel Siso, First CoR Vice-President<sup>103</sup> and President of the Autonomous Community of Murcia, was appointed as the political coordinator of the network in June 2010 in order to link up SMN activities and the CoR's political activities.

## **Consultations**

The CoR established three types of consultation, making it possible to call on the expertise of SMN partners at two distinct points of the EU decision-making process: during the pre-legislative phase, before the presentation of a new EU proposal, with participation in impact assessments conducted by the European Commission, and during the legislative phase, after the adoption of the proposal by the relevant institution with open and targeted consultations. Consultations are generally open for six to eight weeks. Network partners can provide their subsidiarity and proportionality analysis using a standard assessment grid for the open consultations.<sup>104</sup> A specific questionnaire is drafted for impact assessments and targeted consultations. Contributions to the open consultations are translated into the rapporteur's language (if an opinion is drawn up on the issue at stake) and forwarded to the latter for information. A summary report of the contributions<sup>105</sup> on impact assessments and targeted consultations is forwarded

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<sup>102</sup> Rules of Procedure of the Committee of the Regions, Official Journal of the European Union, 9.1.2010, l 6/14. Rule 51(2) of the CoR Rules of Procedure states that "Committee opinions shall contain an explicit reference to the application of the subsidiarity and proportionality principles".

<sup>103</sup> For the first half (2010-2012) of the Committee's new five-year mandate (2010-2015).

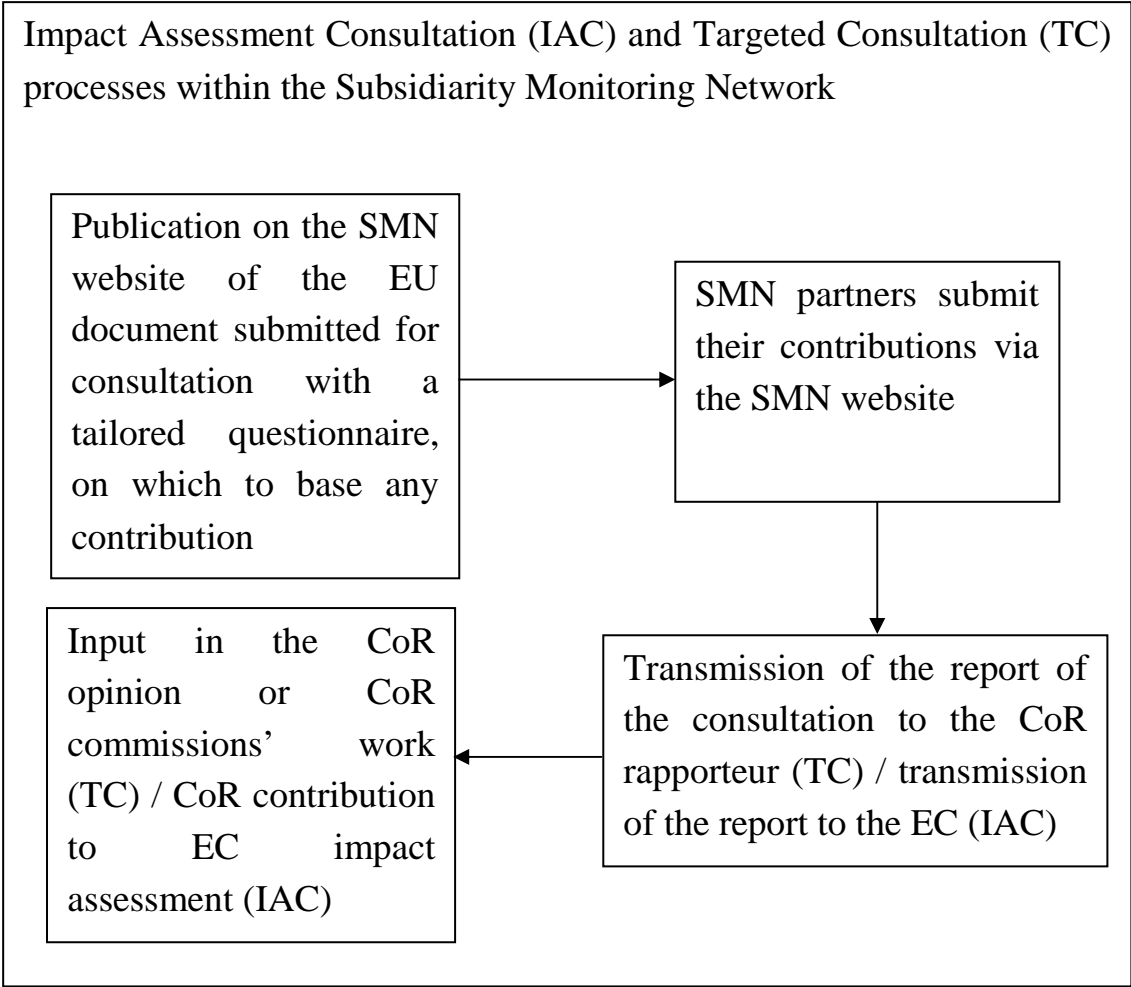
<sup>104</sup> These contributions can be accessed via the SMN website: [www.cor.europa.eu/subsidiarity](http://www.cor.europa.eu/subsidiarity).

<sup>105</sup> Contributions from SMN partners are appended to the report.

to rapporteurs and the relevant CoR commissions to serve as input for political debate by the commissions and during plenary sessions. Reports on impact assessment consultations are also sent to the European Commission.

The SMN was designed to be a tool providing further expertise to support the work of CoR rapporteurs and commissions. However, the final decision on whether to use contributions received through the network for the drafting of opinions is made by the rapporteur.<sup>106</sup>

As stated in the Dunkirk Bureau document<sup>107</sup>, the SMN is still exploring the possibility of launching Early Warning Consultations. This could be possible with the new website and the strengthening of the relationship with regional parliaments after the 2011 Subsidiarity conference.



<sup>106</sup> R/CdR 196/2009 pt 8 a).

<sup>107</sup> R/CdR 229/2008 pt 8 a).

## **Impact Assessment Consultation**

The cooperation agreement between the CoR and the European Commission, signed in 2005 and amended in 2007, states that “in the context of its annual programme, the Commission can ask the committee to take part (a): in studies looking at the impact of certain proposals on local and regional authorities, and (b): in exceptional cases after action has been taken, in impact reports on certain directives from a local and regional perspective”<sup>108</sup>. Impact assessment consultations started in 2009, with the first launched on 6 February 2009 on an EU initiative to reduce health inequalities<sup>109</sup>. The European Commission the results of this consultation into account when drawing up its own impact assessment by taking up some of the elements mentioned by the SMN partners in their contributions. Impact assessment consultations primarily target members of the CoR SMN, but also members of the CoR EU 2020 Monitoring Platform. In very specific cases, they can also be open to private and public-private companies, as in the case of the second consultation launched in October 2009 concerning the Directive on the quality of water intended for human consumption (98/83/EC) (see below).

## **CoR contribution to the EC impact assessment on the Drinking Water Directive**

The CoR, in cooperation with the European Commission's DG Environment, organised a consultation to assess the territorial impact of a number of elements under review in the directive. In addition, because of the complex panoply of water operators existing in the European Union and the strong interest shown in contributing to the debate, both private and public-private water companies were allowed to participate in the consultation. The consultation was launched in October 2009 via an online questionnaire and a translation of survey questions posted on the CoR website. At the end of the consultation a report<sup>110</sup> was drafted

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<sup>108</sup> Cooperation agreement between the European Commission and the CoR (17/11/2005). The agreement can be found at the following web link:

<http://www.cor.europa.eu/pages/PresentationTemplate.aspx?view=folder&id=c1b647a4-eca0-4839-be92-2b37fd714af5&sm=c1b647a4-eca0-4839-be92-2b37fd714af5>.

<sup>109</sup> For more details, see the Summary Report, Assessment of Territorial Impacts of EU Action to Reduce Health Inequalities, 22 April 2009. The report is available on the CoR SMN website: [www.cor.europa.eu/subsidiarity](http://www.cor.europa.eu/subsidiarity).

<sup>110</sup> Final Report on the Committee of the Regions' Consultation on the Revised Drinking Water Directive, Committee of the Regions, Directorate for Consultative Works, Unit 3 – Networks & Subsidiarity.

summarising the 93 contributions received from 18 of the 27 EU Member States plus Norway. Five contributions were from members of the CoR Lisbon Monitoring Platform whilst 11 contributions were received from partner institutions of the CoR Subsidiarity Monitoring Network. The EC has not yet issued a proposal on this matter.

The last impact assessment consultation on the “Assessment of Territorial Impacts of the EU Post 2010 Biodiversity Strategy” was launched by the SMN on 25 September 2010 and ran until 25 October 2010. The CoR received 17 contributions.

The CoR is considering a review of its cooperation agreement with the European Commission with regard to the innovations introduced by the Lisbon Treaty, in particular Article 5 of Protocol No 2 on the application of the principles of subsidiarity and proportionality, which states that “Draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal’s financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators. Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved”<sup>111</sup>.

## **Open Consultation**

Within the context of an open consultation, SMN partners can submit spontaneous contributions on any EU document. Contributions to the

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<sup>111</sup> See also paragraph 8 of the cooperation agreement between the CoR and the European Commission signed in 2005 and amended in 2007:

<http://www.cor.europa.eu/pages/PresentationTemplate.aspx?view=folder&id=c1b647a4-eca0-4839-be92-2b37fd714af5&sm=c1b647a4-eca0-4839-be92-2b37fd714af5>.

subsidiarity and proportionality analysis can be based on a standard assessment grid. Some SMN partners, such as the Austrian Bundesrat, regularly send their own subsidiarity analysis to the CoR and to the European Commission, the European Parliament and the EU Council.

In 2010, the CoR received 27 contributions from SMN partners regarding 21 EC communications.

### **Targeted Consultation**

According to the 2009 Dunkirk Bureau decision<sup>112</sup>, it is the rapporteur who decides whether or not there should be a targeted consultation. For this type of consultation, the SMN partners' contributions are based on a tailored questionnaire comprising a limited number of questions prepared by the Subsidiarity Unit of the CoR General Secretariat in collaboration with the rapporteur and his/her expert. SMN partners can submit their contributions to the rapporteur until three weeks before the adoption of the opinion by the CoR plenary session.

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<sup>112</sup> R/CdR 229/2008 pt 8 a).

## SUMMARY TABLE OF THE DIFFERENT TYPES OF CONSULTATION

	Type of EU documents	Targeted stakeholders	Time-limit for submission of a contribution	Input to the EU decision-making process	Number of consultations (2007–2010)	Number of SMN partners' contributions (2007–2010)	Feedback from the European Commission /EU institutions
Impact assessment consultation	EU legislative documents selected by common agreement with the European Commission	SMN partners AND, depending on the subject concerned: members of the CoR Lisbon Monitoring Platform / the EGTC expert group and/or other relevant stakeholders	6 to 8 weeks	Contribution to the EC Impact Assessments	3	122	Positive feedback from the European Commission so far



Open consultation	Any EU documents	SMN partners	None	Possible contribution to any CoR draft opinions resulting from an obligatory or optional referral	-	27 (2010)	-
Targeted consultation	EU documents on which the CoR is consulted upon the decision of the Rapporteurs	SMN partners	6 to 8 weeks and until 3 weeks before the adoption of the opinion by the CoR relevant commission	Possible contribution to specific CoR draft opinions resulting from an obligatory or optional referral	12	162	-

Consultations to be launched within the EWS framework are currently envisaged by the CoR, but no concrete proposals have been made public so far.

### **The SMN Action Plan**

On the occasion of the 4<sup>th</sup> Subsidiarity Conference held on 8 May 2009 in Milan, the Committee of the Regions and the CoR SMN institutional partners launched the first SMN Action Plan for 2009–2010 “to contribute to stimulating the engagement of local and regional authorities in building a culture of subsidiarity while identifying and exchanging best practices in the implementation of the goals of EU policies, with particular regard to the involvement of civil society organisations”<sup>113</sup>. Following this action plan, five working groups were active in their respective fields from April to December 2010:

- Working group on “Fighting poverty and social exclusion”, lead partner: Arco Latino;
- Working group on “Integration of immigrants in Urban Areas”, lead partner: Catalan Parliament;
- Working group on “Fighting climate change in Europe's cities and regions - Involving the public in sustainable energy solutions”, lead partner: Regional Government of Vorarlberg;
- Working group on “Health Inequalities”, lead partner: Lombardy region;
- Working group on “Social Innovation”, lead partner: Regional Government of the Basque Country/Innobasque (The Basque Innovation Agency).

The purpose of these working groups is to foster dialogue between participants on how to highlight the best ways of implementing EU policies at regional and local levels, in order to provide a practical view of the application of the subsidiarity principle in the relevant field. For each working group, one network partner assumes a coordinating role (the lead partner). The working groups were responsible for drafting documents which will serve as a basis for online exchanges organised through the SMN, and in particular for identifying best practices which can be showcased within the SMN and be of use to politicians,

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<sup>113</sup> SMN Action Plan 2009 – 2010, Subsidiarity in Practice: Implementing EU Policies at the Grass-roots.

policy makers and practitioners in Europe. The final reports of the working groups will be presented during the 5<sup>th</sup> Subsidiarity Conference in March 2011.

### **The Subsidiarity Conference**

The Subsidiarity Conference is the main event organised by the CoR in relation to subsidiarity. The first edition took place in 2004 in Berlin. It is organised jointly by the CoR and the SMN partner hosting the event, to discuss political issues linked to subsidiarity in particular. The 4<sup>th</sup> Subsidiarity Conference took place on 8 May 2009 in Milan, during which the first SMN Action Plan 2009-2010 was launched. This conference was welcomed, since it “sought to set out the challenges underpinning a genuine culture of subsidiarity as a factor of good European governance and to propose examples of best practice in the application of the subsidiarity principle. To that end, a number of partners presented examples of good practice in the cross-sectorial application of the subsidiarity principle”<sup>114</sup>

The SMN partners’ representatives met at administrative level for the first time at a SMN technical coordination meeting in December 2008. They met again in Milan for another coordination meeting organised within the context of the 4<sup>th</sup> Subsidiarity Conference.

The 5<sup>th</sup> Subsidiarity Conference is planned for March 2011 in Bilbao. On that occasion, a report will be presented providing an overview of SMN subsidiarity monitoring activities. This will be the CoR’s contribution to the report from the European Commission on subsidiarity and proportionality to be published in autumn 2011.

### **The SMN and national parliaments**

The CoR opened its SMN to national parliaments following its consideration of the best way to channel SMN expertise and outcomes towards them. At present, the network's partners include the Hellenic Parliament, the Austrian Bundesrat and the French Senate. The latter co-organised with the CoR the 3<sup>rd</sup> Subsidiarity

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<sup>114</sup> R/CdR 196/2009 item 8 a).

Conference held in 2008 in Paris, which representatives of the national parliaments of the other Member States were invited to attend for the first time. The experience was repeated in 2009 in Milan for the 4<sup>th</sup> Subsidiarity Conference co-organised with the regional government of Lombardy. A CoR Bureau documents<sup>115</sup> states that, as a result of the direct participation of the national parliaments in the subsidiarity conferences in 2008 and 2009 and the positive reception of the CoR's statements, the committee now has “a key new institutional and political partner”. The CoR intends to continue its cooperation with national parliaments and will invite the COSAC representatives of each Member State to the forthcoming Subsidiarity Conference in Bilbao.

## ***4.2. National and regional parliaments' perception of the SMN***

The reader should bear in mind that this section has been drafted on the basis of answers received to the questionnaire<sup>116</sup>, which might not necessarily reflect the general state of play and opinions of the 74 regional parliaments with legislative powers within the eight Member States studied.

### **Overall high level of awareness and interest in the SMN's work**

In general, there is greater awareness of and interest in the CoR SMN's work at regional level than at national level.

*At national level:* Some national parliaments (chambers) are aware of the existence of the CoR SMN and are keen to receive the subsidiarity analysis carried out by the SMN when performing their own analysis in the framework of the EWS or regular feedback on its work (Belgian Senate, German Bundesrat, Portuguese Parliament and House of Lords), whereas some are aware of it, but do not focus particularly on its initiatives (Italian national parliament, Bundestag and House of Commons). Others are not aware of the existence of the network

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<sup>115</sup> R/CdR 283/2009 item 3 a).

<sup>116</sup> See annex 1 for an overview of the regional parliaments with legislative powers which have replied to the questionnaire.

(Spanish Congress of Deputies and Senate<sup>117</sup>) and are not keen to receive the subsidiarity analysis carried out by the SMN (Finnish Parliament).

*At regional level:* The majority of regional parliaments are aware of and interested in receiving the subsidiarity analysis sufficiently in advance, as well as support, information<sup>118</sup> and advice from the CoR SMN during the preparation of their subsidiarity analysis within the EWS (Flemish Parliament, German regional parliaments, Åland Parliament, the three British devolved legislatures). The latter are mostly SMN members (Murcia (ES), Friuli-Venezia Giulia since 2010, Emilia Romagna (IT)), but some are not (Aragon, Cantabria, Galicia, La Rioja). Certain parliaments specified that they have already consulted the network's resources on subsidiarity (Austrian regional parliaments).

### **Mixed level of participation but generally positive perception**

The participation of parliaments in the CoR SMN is greater at regional level than at national level.

*At national level:* Very few assemblies representing regional interests are members of the SMN. Moreover, the Austrian Bundesrat receives and circulates to the relevant stakeholders all documentation available to the members of the SMN network. The recommendations and analyses are considered very useful but are used purely for information purposes. The Bundesrat as such does not directly receive the support and information provided by the CoR SMN. The input of the network is received by the regional parliaments and through them it is integrated into the debate within the Austrian Bundesrat.

*At regional level:* Most of the regional parliaments interviewed participate in the SMN. The Italian regional assemblies of Emilia-Romagna and Friuli Venezia Giulia, which were amongst the first regions to take part in the SMN network, underlined in particular the importance of the support given by the Committee of the Regions, especially the Subsidiarity Unit. In addition, the SMN is generally

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<sup>117</sup> Telephone interview with Ignacio Carbajal Iranzo, Lawyer of the Joint Committee for the EU, October 2010

<sup>118</sup> According to the German regional parliaments, this should include analyses, exchange of practices and points of view, reports from procedures conducted and studies concerning subsidiarity within the EU.

considered an ideal means for ensuring an effective and concrete subsidiarity analysis. Its support is essential in terms of closer cooperation between all regions which are members of the network. It is also seen as very important in relation to tackling the lack of human and financial resources (Bolzano). According to the answers received from the Spanish regional parliaments participating in the SMN, the latter is considered a useful tool in the preparation of their subsidiarity analysis (Aragon, Cantabria, Murcia).

### **Certain doubts/scepticism**

Some doubts and scepticism regarding the EWS and the CoR SMN's activities are expressed by some parliaments at both national and regional levels.

*At national level:* The Finnish Parliament specified that it only makes use of the EWS procedure when there are compelling reasons to do so, since it is considered to have much less impact on the substance of EU legislative proposals than the national scrutiny procedure. The decision has therefore been taken to devote no more time or resources to the EWS than is absolutely necessary. This is why it is not keen to receive any material related to subsidiarity scrutiny based on the SMN's activities.

*At regional level:* Saarland (DE) expressed its scepticism regarding the efficiency, usefulness and feasibility of creating additional international subsidiarity networks. Some Italian regional assemblies are concerned that their participation in the EU law-making process may not be as real and effective as the EWS is intended to guarantee. The view was also expressed that it was greater involvement and awareness of the political level which would be truly effective (Emilia-Romagna).

## Perception of the Role of the CoR Subsidiarity Monitoring Network

	National Parliaments		Regional Parliaments
Austria	Nationalrat	Bundesrat	Landtage
	-	Helpful, BR is member of SMN	Various responses: useful instrument, but without crucial impact useful, but not proactive enough
Belgium	House of Representatives	Senate	Regional and Community Parliaments
	-	Awareness of the existence of the CoR SMN and keen to receive the subsidiarity analysis carried out by the SMN	The Flemish Parliament is interested in receiving support and advice from the CoR SMN and is keen to receive any material related to its activities.
Germany	Bundestag	Bundesrat	Regions
	-	Helpful, but mainly for the regions individually; analyses and other inputs appreciated though	Various responses: important forum for exchange useful instrument, but without crucial impact not sufficiently aware of the mission and role, or not participating

Italy	Chamber of Deputies	Senate of the Republic	Regional/Provincial Assemblies
	The national parliament is aware of the existence of the SMN but no particular attention is paid to the initiatives		At regional level, it is considered a useful instrument for guaranteeing an effective subsidiarity check, in particular due to the lack of communication with the national level. The support is considered important in order to receive more information and to compare the results
Spain	Joint Committee for the European Union		Regional Parliaments
	Not aware of the SMN's existence		General awareness of the SMN and keen to receive information about the SMN activities
Finland	Eduskunta		Åland Parliament
	No awareness of the existence of the CoR's SMN		Keen to receive information about the SMN's activities



Portugal	Assembly of the Republic		Legislative Assemblies of Azores and Madeira
	Aware, interest in receiving the subsidiarity analysis.		-
United Kingdom	House of Commons	House of Lords	Devolved legislatures
	Awareness of the existence of the CoR SMN BUT not keen to receive its material dealing with subsidiarity.	Awareness of the existence of the CoR SMN and interested in receiving its subsidiarity analysis.	Potential interest in receiving support and advice from the SMN in the preparation of its subsidiarity analysis within the EWS, and in receiving a subsidiarity analysis from the SMN sufficiently in advance.

### ***4.3. Needs and expectations of regional parliaments with legislative powers concerning the SMN***

Diverse needs and expectations regarding the CoR SMN have been expressed by the interviewees. They mainly focus on coordination and the timely transfer of information and support to provide greater understanding of EWS implementation in Member States.

## **Role of coordination / Creation of a database**

According to the Austrian regional parliaments, the CoR and its SMN in particular could play a more proactive role in coordinating subsidiarity monitoring at regional level. Saxony (DE) suggests that the CoR develops and manages a central European database of regional subsidiarity analyses. Similarly, the Italian regional assemblies pointed out the recurrent difficulties in receiving the amount of EU information and documents from the national and European levels concerning legislative proposals. The SMN could be an important instrument in promoting coordination between the regional assemblies with legislative powers and it was suggested that a database be created based on the database in operation for IPEX.

## **Timely transfer of information for a timely contribution**

According to the Austrian regional parliaments, the SMN currently seems only to gather and circulate input provided by its members, and often regional parliaments obtain this information *post factum*. It would welcome the SMN providing information more promptly. Furthermore, if the CoR's own subsidiarity analyses were provided *ex ante* and in a more interactive way, this would provide a helpful tool for regional parliaments in conducting their subsidiarity scrutiny. The German regional parliaments, which are interested in enhancing their cooperation with the network, also underlined the importance of the timely submission/distribution of information, since the exchange of information *post-factum* alone is insufficient. Instead, the SMN should become a forum for the exchange of information/views *ex ante* and for providing input on the basis of which opinions can be formed in the regions before or during their deliberations on the appropriateness of a reasoned opinion. In addition to this, according to the Italian regional assemblies, the SMN could help to obtain EU legislative proposals in advance so that a position can be taken on them at regional level.

## **Gaining a better understanding of EWS implementation in Member States**

The three British devolved legislatures expressed their interest in gaining, with the support of the SMN, an understanding of how the EWS is being

implemented in other Member States, and the way in which other regional parliaments are engaging with the EWS. To do so, they would expect a report or dedicated web-pages outlining the state of play in each Member State, with case studies from regional parliaments. Either the report or the web-pages would have to be updated regularly (e.g. an annual update in a report format). The Northern Ireland Assembly suggested that such a report should address the following issues: how well are regional parliaments getting involved in the EWS? Is the eight-week time limit too tight for them to have the opportunity to consider and respond to the national parliament? And how often are the national parliaments actually consulting the regional parliaments?

#### ***4.4. Promoting the SMN as an effective tool for regional parliaments with legislative powers concerning the EWS***

##### **The potential of the the SMN**

*Creating a special platform dedicated to regional parliaments/assemblies with legislative powers:* some of the activities of the CoR SMN could be dedicated to regional parliaments with legislative powers by means of a special platform to facilitate the establishment of subsidiarity monitoring through the provision of support/advice and information on what is happening in other Member States. Moreover, in order to respond to the need for coordination expressed by the regional parliaments, the SMN could also coordinate the different subsidiarity monitoring systems in each Member State, at both regional and national levels. EU draft legislative proposals should also be provided at an early stage, ensuring visibility in the results of the regional parliaments' subsidiarity analyses.

*Facilitating cooperation between regional parliaments:* the SMN could also be an efficient tool for supporting cooperation between regional parliaments. Indeed, few regional parliaments cooperate with regional parliaments in other Member States. Since some of them feel the need for closer cooperation on issues of shared concern across different parts of the EU, the CoR might consider ways of facilitating such cooperation through its SMN, with a view to

facilitating dialogue and exchange of information/best practices amongst them, e.g. by means of a forum, joint meetings with CALRE etc.

*Prioritising the consultation processes – Alert system:* the diverse consultation processes could be prioritised and planned well in advance in order to ensure participation by the partners, accompanied by a system of alert for each consultation (to this end, a database could be created with one contact point identified for each regional parliament/partner). Regional parliaments and other partners could also be given the opportunity to send their contributions to subsidiarity consultations to a dedicated SMN/CoR.

*Visibility of the instruments available to regional parliaments/partners:* a clear picture of the instruments available to partners seems essential: e.g. the subsidiarity grid for the open consultation, the specifically drafted questionnaires for the target and impact assessment consultations etc.

*Organising training sessions/informal (technical) meetings:* another possibility for the SMN in terms of support for parliaments and its other partners would be to organise adequate training sessions and informal (technical) meetings on the subject of subsidiarity, the SMN and its activities (e.g. a presentation of the network, particularly its different types of consultation; training for partners having difficulties filling in the subsidiarity dossier/grid etc).

*More and better communication on SMN activities directed towards parliaments and EU institutions:* as part of the discussion on how to develop the SMN's potential, the question of more and better communication on the SMN activities directed towards parliaments at both regional and national levels, as well as the EU institutions, will have to be raised.

*Regular evaluation of the SMN's work/activities:* to maximise the potential of the SMN, the CoR could carry out a specific evaluation of its added value during the preparatory (impact assessment consultations) and early phases of the EU legislative process (open and targeted consultations), taking account of the appropriate resources (both human and financial) and its true capacities to carry out its duties properly. In the same vein, an annual survey targeting the SMN partners could be carried out to evaluate their level of satisfaction, their needs

and their expectations. On the basis of all of this information, an evaluation progress report could be drafted annually.

*Increasing membership of regional parliaments with legislative powers:* so far, only 27 of the 74 regional parliaments within the EU are members of the SMN. In order to validate its work with regard to the EWS, the CoR should increase its efforts to make – ideally – all of the regional parliaments members of the SMN.

### **The SMN website: a tool with potential for optimisation**

The following EIPA proposals could be considered for improving the SMN website, the new version of which was launched at the end of 2010 - they are intended to create a more practical communication instrument:

*Creating a general quick find tool on the home page:* this would facilitate quick searches for documents/events or any issue of interest to the SMN partners.

*Improving the main menu:* the main menu is important for providing a clear overview of SMN objectives and activities. This main menu could include the following sections: ‘News’ (if it does not appear directly on the home page as suggested), ‘Subsidiarity within the EU’; ‘Objectives’; ‘Policy areas’; ‘Consultations’ (impact assessment, open and targeted consultations); ‘Working groups’ (with all the data regarding the Action Plan 2009-2010 and the state of play of their activities (e.g. minutes of their meetings, reports etc); ‘Subsidiarity Conference’ (with all data regarding both past and future conferences); ‘Partners’ (this section would include conditions for application and the advantages of membership); ‘Documents’; ‘Partners’ Events’; ‘Library’ and ‘Useful links’. A section dedicated to the EWS could also be added, or included in one of the sections of the main menu. This part would contain information on the purpose and the implementation of the EWS at both national and regional levels.

*Facilitating the archiving and location of SMN consultation reports:* the CoR could consider establishing a code number for the final report produced at the end of each consultation e.g. CdR IA/1/09; CdR OC/1/09; CdR TC/2/10. This would help partners and the general public when searching for that information.

*Monitoring participation:* the consultations section should contain information on the average participation of the SMN partners, the number of consultations etc. (see table in part 4.1.).

*Increasing the visibility of the SMN partners:* this section would take the form of a database with a multi-criteria search tool, facilitating the search for partners according to their respective country and/or their types (e.g. regional parliaments with legislative powers, regional assemblies, regional governments, national parliaments/Chamber of a national parliament, others). The number of partners should also be indicated.

*Increasing interactivity:* for example, the CoR could create an interactive map indicating all of the EU Member States, on which one can click to be shown the partners in a particular country, the subsidiarity monitoring system in place both at national and regional levels, the innovations regarding subsidiarity etc. It could also be possible for both regional and national parliaments which are members of the SMN to upload their own documents/contributions regarding their county/region on the SMN website.

*Monitoring virtual visits to the SMN website:* it should be possible to view the number of visits to the SMN website. To this end, a counter would be visible on the website itself, or internally by the webmaster.

### **Creation of synergies with EU institutions**

The CoR could consider reinforcing its relationship with the other EU institutions regarding subsidiarity issues, in particular the European Commission and the European Parliament regarding the EWS.

One of the questions which needs to be raised at this point, regarding the implementation of the EWS, is: which institution is centralising the receipt of reasoned opinions? (According to the protocols, they are sent to the Presidents of the European Commission, the Council and the EP). To ensure transparency, data regarding reasoned opinions (which national parliament/chamber/regional parliament has sent a reasoned opinion on which EU draft legislative act?)

should be more easily accessible, particularly in order to obtain a clear overview of the number of votes.

The revision of the cooperation agreement between the European Commission and the Committee of the Regions could consider practical adaptations in order to ensure proper implementation of the EWS.

### **Creation of synergies with other networks**

Synergies between the SMN and other CoR networks (e.g. the Europe 2020 Monitoring Platform) are of the utmost importance in terms of optimising resources and results, particularly regarding impact assessments.

The CoR could also enhance synergies with CALRE (e.g. its new forum for its members, organising joint meetings etc.), and with the interregional group CALRE-REGLEG<sup>119</sup>, for instance in order to identify and to prioritise, in cooperation with the SMN, the EU draft legislative acts on which to launch an impact assessment consultation or a targeted consultation.

Cooperation with the national parliaments could also be strengthened, particularly through the COSAC, in order to promote the SMN's work. Access to the SMN website could also be more visible on the IPEX website.

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<sup>119</sup> The “Regions with legislative power” Group (REGLEG/CALRE), approved by the Bureau decision of June 2007, seeks to take the initiative in policy areas such as better regulation and governance, and to uphold the rights of the sub-national level in implementing subsidiarity. It also aims to enable other CoR members to avail themselves of the professional experience and expertise of the regions with legislative powers. Its current work focuses on multi-level governance in Europe and the implementation of the subsidiarity and proportionality principles. The group is especially interested in exchanging best practices on subsidiarity monitoring mechanisms and it intends to take part in the consultation process organised by the European Commission before it finalises European proposals on the matter.





## 5. Conclusions and Recommendations

1. - The reinforcement of the subsidiarity principle within the EU decision-making process<sup>120</sup> is one of the major breakthroughs of the Lisbon Treaty. The definition of the subsidiarity principle now explicitly contains the local and regional dimensions<sup>121</sup>. Regional parliaments with legislative powers can be invited by the national parliament or one of its chambers to give their opinions on subsidiarity compliance for EU draft legislative proposals. Although the position(s) of regional assemblies will not be binding for the national parliament<sup>122</sup>, this principle underlines the need to respect the local and regional authorities' competences within the EU. If there are more than one third (or one quarter in the area of justice and internal affairs) of negative opinions on the part of national parliaments, the respective legislative initiator must review its proposal.

The right balance has to be found between enthusiasts and sceptics when analysing the potentials of the reinforced subsidiarity principle and the EWS. On the one hand, Article 6 of Protocol No2 does not provide new powers for regional parliaments with legislative powers. In fact, having examined the constitutional setting of the regions analysed and considering carefully the potentials of Article 6, some academics<sup>123</sup> would say that participating in the EWS could be – taking the sceptical perspective - more costly than beneficial for regional parliaments. Regional parliaments already have ways to scrutinise and participate in subsidiarity checks directly with their national executive and parliament, with the Commission, the CoR and other European institutions. They are involved in networks, prepare common joint contributions and use the channels provided by their own regional and national executives to make their position(s) heard in the EU Council. On the other hand, the new role of regional parliaments in the EWS should not be underestimated. It is important to note

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120 See Article 5 of the Treaty on European Union (TEU) and Protocol n° 2 to the Lisbon Treaty on the Application of the Principles of Subsidiarity and proportionality.

121 See Article 5(3) of the TEU.

<sup>122</sup> Except in the case of Belgium

<sup>123</sup> The authors, in agreement with the peer review of this report as presented by the reviewer Philipp Kiiver. Associate professor Maastricht University

that, for the first time, there is a formal mechanism for involving this level of power.

The extension of EU competences into new areas under the Lisbon Treaty might also create new possibilities for subsidiarity disputes. It might provide some national parliaments with an additional incentive to become more involved in EU affairs<sup>124</sup>. Indeed, the Austrian and Belgian territorial chambers and the German Bundesrat, directly representing the regions, get one vote with the EWS, granting them a direct influence, for the first time, in the subsidiarity scrutiny of EU legislative proposals.

2. - So far, there have only been a few cases of regional parliaments being involved in subsidiarity checks, partly due to the on-going revisions of the existing procedures for involving them in most of the countries studied. This might also be due to a lack of resources and time on the part of some regional parliaments to conduct subsidiarity checks, hence the need for better evaluation of the importance of the EU draft legislative acts. The complete and in-depth *ex-ante* analysis of subsidiarity compliancy by the Commission should also be highlighted.

Due to the general lack of involvement by regional parliaments with legislative powers, Article 6 of Protocol No 2 is clearly aimed at enhancing their role and promoting their involvement in a new process giving respective roles to new key actors in the EU legislative process. The Lisbon Treaty creates awareness of the subsidiarity principle within the parliamentary systems of the EU (both national and regional), facilitating the establishment of a culture of European debate, which until now has been absent in most regional assemblies. Becoming aware of the importance of scrutinising how the EU makes use of shared competences at an early stage and assessing whether the objectives of the proposed legislation can be better achieved by the Member States at central or regional levels is a real challenge. Making use of the possibilities for establishing early multilevel dialogue to formulate EU policy/legislation with other parliaments (regional and

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<sup>124</sup> Stefanie Rothenberger and Oliver Vogt, "The orange card: a fitting response to national Parliaments' marginalisation in EU decision-making? Paper presented at the conference "Fifty years of interparliamentary cooperation" 13 June 2007, Bundesrat, Berlin.

national), and with the European Commission, goes beyond the previous practice of legislative-executive scrutiny within internal borders.

3. - Subsidiarity scrutiny at regional level might not coincide with national perceptions, and the role given to regional parliaments is therefore relevant. The criteria used by the Commission when deciding whether to legislate at EU level might clash with the regions' interpretation of the objectives of the proposed action. Furthermore, the new parliamentary competences and responsibilities enshrined in the new Lisbon Treaty, affecting the direct interests of the regions in most cases, might awaken the interest of some regional parliaments in the issue of compliance with the subsidiarity principle.

4. - The survey indicates that the EWS is implemented in different ways in the different Member States studied. The summary tables for each country presented in Chapter 2 indicate the following:

Only four countries (AT, BE, DE, ES) have established specific procedures in accordance with EWS provisions at national level, whilst the other four (IT, FI, PT and UK) have not yet done so.

For the latter four, the reasons vary. In the case of IT, FI and PT, a reform project is planned for 2011. For the UK, the perception is that the general scrutiny procedure applies for all types of document and there is therefore no need to establish any new procedure.

In the case of the newly-established procedures at regional level, the picture is also very different. Whereas in the four countries with established procedures the regional parliaments have also revised their internal rules of procedures in most cases, in the case of the Member States without any specific procedure, we see that some regional parliaments have been more active than the national legislator. This is clearly the case for IT and UK.

The perception of the new role for regional parliaments is different at the national and the regional levels, the regional level embracing the need for reforms more positively. However, the replies to the questionnaire should be considered cautiously, particularly when reality shows that regional parliaments'

action in relation to subsidiarity control is rather scarce, if not completely absent, in certain Member States.

5.- The survey has shown that until now there are no cases of differing opinions between the regional and the national parliaments. In all of the cases analysed, it is for the national parliament to make decisions, since the opinion of the regional parliaments is not binding. There are different ways to reflect the opinion of the regional chamber. In Finland, the opinion of the regional parliament will always be forwarded to the European institutions. In countries with bicameralism and an independent system of providing opinions by chamber, the decisions of the chambers representing regions reflect the consensus among the majority of the regions (for example the BR in DE). In others, there is no specific procedure foreseen resolving possible conflicts (ES), or all the opinions (even if they are differing) will be sent to the European institutions (BE). In Italy, the ongoing reform discussions foresee that if the national parliament so decides, it could attempt to convey an agreement through the conference of presidents of regional parliaments.

Therefore, on the basis of the analysis of the survey's results, the answer to the question “What can be the role of regional parliaments within the context of the new EWS put in place by the Lisbon Treaty” may be as follows:

a). - The EWS is politically and institutionally perceived, particularly at regional level, as an important means for implementing the smart regulation strategy, for providing regions with a greater voice in the European arena, for bringing Europe closer to the citizens and for activating public debate on European issues.

Whilst at national level, in various parliaments (AT, DE, FI), the EWS will not bring about a major change to its existing European scrutiny procedure, at the regional level the perception is rather different. The officials consulted in the survey positively embrace the idea of being involved, although one may wonder to what extent they have carried out any real analysis of the implications and shortcomings of the system. One year of a binding Lisbon Treaty might not be sufficient to assess the real level of involvement of regional assemblies.

b). - The EWS opens up the possibility for regional parliaments to provide their opinions on subsidiarity compliance. This will have an important impact in their decision-making process at the different stages, requiring institutional adaptations by the different stakeholders. It is true that, strictly speaking, before Lisbon, regional assemblies could also take a position on subsidiarity issues and cooperate with national parliaments informally, but now their role is reinforced and enhanced within a legal framework. The instrument has powerful symbolism: it might bring the European debate into the local arena, incorporating regional assemblies in the European debate, with an echo effect among the regional and local population.

c). - Bringing subsidiarity into regional parliamentary consciousness is a challenge that demands internal changes in the handling of EU affairs. How regional parliaments will deal with the challenge of scrutinising whether or not a decision is taken at the right/best level will be proportionate to its resources, capacities, culture and understanding of its duty, which in turn might be different from those of a national parliament.

Since the proposals to be scrutinised are numerous and the capacities and time available very limited, the challenge now is for the regional parliaments to be selective in their choice of acts to be scrutinised. Since almost all of the Member States studied (with the exception of IT and PT so far) have decided to transfer all documents without any sort of filtering, regional parliaments will need to count on the support of their executives at regional and national level, liaison offices in Brussels and existing networks, to keep a watchful eye on the legal acts that might be contentious.

The role of the regional parliaments in the EWS is to bring Europe closer to the citizens, by bringing an active discussion on the limits of the European legislation in terms of the subsidiarity principle from the regional perspective into the arena of the regional assemblies. Their role is to act in a coordinated fashion, to be selective at a very early stage, to raise their doubts/fears about a given proposal at EU level, to create groups of regions/countries etc. In short, to deal with European affairs in a more proactive and consolidated manner.



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## Annexes

Annex 1: Summary table - Participation in the study

Federal states			Regionalised states		Asymmetrical regionalised states		
AT	BE	DE	IT	ES	FI	PT	UK
33%	33%	50%	63%	47%	100%	-	100%

Regional participation and contribution to the study (%)

Vienna			Piemont				
Tirol			Tuscany				
Vorarlberg			Lombardy				
		Baden-	Friuli-VG	Galicia			
		Württemberg	Emilia-R.	Cantabria			
		Bavaria	Marche	Extremadura			
		Bremen	Lazio	Catalunia			Wales
	Flanders	Hamburg	Abruzzo	Murcia	Alands	-	Scotland
		Hessen	Molise	La Rioja			Northern
		North Rhine-	Calabria	Aragon			Ireland
		Westphalia	Sicily	Canary			
		Saarland	Sardinia	Islands			
		Sachsen	Trentino-				
			A.Adige				

Federal states			Regionalised states		Asymmetrical regionalised states		
AT	BE	DE	IT	ES	FI	PT	UK
YES	YES	YES	NO	YES	YES	YES	YES

Parlamentsdirektion  
(Legislative)

National Participation

Ausschussbetretung  
Nationalrat

Senate

Bundestag  
Bundesrat

-

*Comision*

*Mixta* - Joint  
Committee  
for the EU

National  
Parliament

Asembleia  
da  
Republica

National  
Parliament

Ausschussbetretung  
Bundesrat

Annex 2: Legal basis for the regional parliaments' legislative powers.

### **Austria: Landtage**

Austrian regional parliaments (Landtage) are unicameral parliaments elected in regional elections for a period of five years (exception: Oberösterreich for six years). Their legislative competences encompass a large number of areas. In principle, regions are allowed to legislate in all areas except where exclusive federal legislative competences apply. Areas with exclusive federal competence are laid down in an exhaustive list in the BVG. Since the regional parliaments are unicameral, the federal government (Bundesregierung) has formal veto power over the legislation passed at regional level. This veto power is meant to balance the influence of the regions at federal level, which impacts on the regions through the requirement for the legislation passed at federal level to be approved by the BR.

### **Belgium: Regional and Community Parliaments**

The federalisation process has been very pronounced in Belgium and has led to a situation in which regions and communities benefit from extensive autonomy, and all federated entities are organised as 'mini-states' with an executive, directly-elected assemblies, a civil service, full legislative powers and a capacity to conclude international agreements.

While the federal government is responsible for justice, policing, defence, social policies (e.g. pensions, unemployment, sickness and disability entitlements) and the public debt, communities primarily deal with education, cultural, linguistic and social policies, and regions govern a wide variety of 'territorial' matters such as agriculture, transport, energy, spatial planning etc. The unique Flemish Parliaments deal with the environment, education, infrastructure, agriculture, fishery etc.

The Belgian State has always advocated European institutional recognition of the importance of sub-state political entities. The concern for regional representation in EU decision-making is, among other things, reflected in the practice of regional and/or community ministers representing the Belgian State in Council bodies which cover policy sectors with significant community/regional prerogatives. Some Council bodies were even chaired by regional/community ministers during the Belgian Presidency.

### **Germany: Regional Parliaments**

Germany is a federal state with specific legislative competences assigned to the regions. In a similar manner to the EU system, the GG names different categories of legislative competences (in the case of Germany there are two, not three – as in the EU), which are distributed between the national/federal (Bundesebene) and the regional level (Landesebene): the exclusive federal competences (Art. 71 and 73 GG) and shared competences (Art. 72 and 74 GG). All non-listed competences are areas in which the regions exercise their legislative powers. Framework legislation as the exclusive competence of the federal level was abolished in the constitutional reform of 2006 (“Föderalismusreform”).

All legislative proposals outside the exclusive competence of the federal level (Bund) have to be adopted by both the BR and the BT. Following this logic, all EU legislative proposals that touch upon the (shared) legislative competence of the regions are subject to the subsidiarity scrutiny procedure. The regions participate through the ordinary decision-making procedures in the BR.

### **Italy: Regional Legislative Assemblies**

According to the Italian Constitution, legislative power falls to the State and the regions in accordance with the limits laid down by European Union law and international obligations. Article 117 establishes a list of competences falling to the States, as well as all the matters subject to concurrent legislation by both

States and regions. Moreover, it is important to underline that the regions have exclusive legislative power with respect to any matters not expressly reserved for State law. Regarding matters that lie within their field of competence, the regions and the autonomous provinces of Trento and Bolzano participate in any decisions regarding the creation of community law. The general background concerning the role of the regions and local authorities was subject to an important reform carried out in 2001 – the so-called Riforma del Titolo Quinto della Costituzione. Innovative changes have been introduced in a federal perspective. Nevertheless, Italy can still be seen as a regionalised State.

### **Finland: The Åland Parliament**

The Parliament has 30 members, who are elected every four years by secret ballot under a system of proportional representation. Legislative power was conferred on the Åland by the Autonomy Act of 1920, which has been revised several times: in 1951 and in 1993. With the entry into force of the Lisbon Treaty, a revision is currently pending the next election of the national parliament. The Autonomy Act lists the areas in which the Åland Parliament has the right to pass legislation independently of the Finnish Republic. The most important of these are:

- education, culture and the preservation of ancient monuments;
- health and medical care, the environment;
- promotion of industry;
- internal transport;
- local government;
- policing;
- postal communications, radio and television.

In these areas, the Åland functions practically like an independent state with its own laws and administration. The laws adopted by the Åland Parliament are referred to the Finnish President, who has a right of veto in just two situations: if the Parliament has exceeded its legislative authority or if the bill would affect

Finland's internal or external security. The President bases his decision on the opinion of a body known as the Åland Delegation and occasionally also on the opinion expressed by the Supreme Court. Half of the members of the Åland Delegation are appointed by the Finnish Government and half by the Åland Parliament.<sup>125</sup>

Both the Finnish Republic and the Åland Province ceded power to the European Union upon accession. European directives need to be implemented separately in the Republic and in the Province. The Åland is represented by the provincial government, which is accountable to the provincial parliament. The provincial government considers Finnish policy on EU proposals to be within the province's competence. The province has the right to participate in the preparation of Finnish positions on EU proposals when they touch upon issues within the province's competence. When national and provincial views cannot be reconciled, the national government is obliged to express the provincial view to the EU institutions too, if the province so requests. The provincial government also has the right to be represented in the Finnish team negotiating issues of provincial concern.

### **Portugal: Azores and Madeira**

Azores and Madeira have a constitutionally-mandated autonomous status and statutory and legislative autonomy. The former means that they have the right to initiative in terms of reviewing their statute, which must then be approved by the national parliament. The latter means that they have the power to issue regional legislative decrees according to a list of matters of regional interest which was introduced by the 1997 constitutional reform (including environmental conservation, territorial administration, transport, agricultural, commercial and industrial development, sport, tourism, crafts, regional organisation and all other "island" matters). Both autonomous regions have their own regional legislative Assembly.

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<sup>125</sup> See the brochure Åland in brief: <http://www.aland.ax/.composer/upload//alandinbrief08.pdf>.



## **The United Kingdom: the devolved legislatures**

Section 28(1) of the Scotland Act 1998, which established the Scottish Parliament, provides that the parliament may make laws, to be known as Acts of the Scottish Parliament. ‘Bills’ are draft ‘Acts’ of the Scottish Parliament and they become law only if passed by the parliament and then given Royal Assent.<sup>126</sup>

Section 94 of the Government of Wales Act 1998 defines the “legislative competence” of the National Assembly. Its revision in 2006 (“the 2006 Act”) provides a mechanism for the National Assembly to acquire, on a case-by-case basis, more powers to make its own laws. In the areas in which it has legislative competence, the assembly can make its own laws, known as ‘Measures’. A Measure will have similar effect to an Act of Parliament.<sup>127</sup>

Part II of the Northern Ireland Act 1998<sup>128</sup> defines the legislative powers of the Assembly and allows it to make laws on transferred matters in Northern Ireland and to enact primary legislation for Northern Ireland. A proposal for (i.e. draft) legislation is referred to as a ‘Bill’ until it is passed by the Assembly. Once a bill completes its passage through the assembly and is given Royal Assent it becomes an ‘Act’ of the Assem.

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<sup>126</sup> See the website of the UK Parliament:

<http://www.parliament.uk/about/how/role/devolved/devolved/devolved/>.

<sup>127</sup> See the website of the National Assembly for Wales: <http://www.assemblywales.org/bus-home/bus-legislation/bus-legislation-guidance.htm>.

<sup>128</sup> <http://www.statutelaw.gov.uk/content.aspx?activeTextDocId=2045126>.