

# Controlling Subsidiarity in Today's EU: the Role of the European Parliament and the National Parliaments<sup>1</sup>

## ABSTRACT

Since the entry into force of the Lisbon Treaty (2009), the EU national parliaments have had the right to control the principle of subsidiarity through the Early Warning System (EWS). This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the JURI Committee, examines how the EWS has worked over the past 12 years. It also looks into the interaction of the European Commission, local and regional entities, the Committee of the Regions and the Court of Justice of the EU with national parliaments to this end.

Since 1992, the principle of subsidiarity, a general principle of European Union (EU) law, has played a key role in the EU as it functions today. This principle determines which player in the EU or from its Member States should act to reach a specific objective, whereby the lowest level of governance should always be favoured when possible.

As a general principle of EU law, the principle of subsidiarity has been liable for judicial review by the Court of Justice of the EU since the Maastricht Treaty. However, the Lisbon Treaty added the possibility of a political control mechanism by national parliaments in the framework of the Early Warning System (EWS). If a national parliament/chamber considers that a legislative proposal does not respect the principle of subsidiarity, it may adopt a reasoned opinion. National parliaments should consult regional parliaments with legislative powers 'where appropriate'.

The Political Dialogue has been much more frequently used than the EWS, which has only been activated on three occasions since 2009, leading to its effectiveness being repeatedly questioned. National and regional parliaments' interest in this System appears to have decreased over the past decade, and several initiatives including the creation by the European Commission of the Task Force on subsidiarity, proportionality and 'doing less more efficiently' have been launched over the years to improve its functioning.

As a follow up to the recommendations issued by the Task Force, which also devoted specific attention to the need to duly consider and involve the local and the regional levels of governance, several reforms have been implemented. For instance, a subsidiarity grid is now used by the European Commission in its legislative

---

<sup>1</sup> Full study in English:

[https://www.europarl.europa.eu/RegData/etudes/STUD/2022/732058/IPOL\\_STU\(2022\)732058\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/732058/IPOL_STU(2022)732058_EN.pdf)



proposals. The Committee of the Regions has also sought to improve the procedures in place to promote the respect of the principle of subsidiarity even further.

In general, the European Parliament has devoted increased attention to national parliaments' reasoned opinions and contributions since the Lisbon Treaty entered into force in 2009, and the European Commission has, too, become increasingly committed to guarantee the respect of the principle of subsidiarity and to engage in a dialogue with national and regional parliaments.

This notwithstanding, discussions on potential future reforms are still on-going, for instance in the framework of COSAC, and the possibility to create a green card for national parliaments is being intensively debated. Parliaments are keen to play a more active and positive role, as opposed to being limited to the negative and proactive role, which the EWS allows them to play.

The Lisbon Treaty, furthermore, acknowledged the possibility for national parliaments to ask their governments to launch an action for annulment on the ground of a subsidiarity breach, and the Committee of the Regions may, too, avail itself of the same right. These changes are in line with the increased importance devoted to the local and the regional levels in the control and the implementation of the principle of subsidiarity which is evident from the explicit mention of the local and the regional dimensions.

To date, neither national parliaments nor the Committee of the Regions have availed themselves of this possibility. This and the limited number of yellow cards raised to date point towards the fact that there has not been any subsidiarity issue. In this sense, a reform of the EWS system that would consist in lowering the thresholds applicable or in extending the eight week-deadline to raise reasoned opinions is unlikely to have a significant impact, and other possible reforms should be preferred.

To improve the existing situation, the following **recommendations** are thus made:

- The **existing thresholds within the EWS should be applied in a flexible manner**. The **established eight-week deadline should be applied in the most flexible manner possible**.
- The **European Commission should provide detailed and individual answers to all the reasoned opinions it receives**, and it should, along with the EU legislator, **outline the impact of reasoned opinions (and contributions) on a given legislative proposal**.
- National parliaments should be attributed a **more positive and proactive role** by, for instance, **creating a green card** that would operate with thresholds that are both reachable and not so low as to trigger very numerous green cards. In any case, the **European Commission should consider all the input** it receives as potential ideas to take on board its policy agenda, regardless of the number of chambers supporting it.
- National parliaments should **always provide an English translation of the contributions** they submit in the framework of the Political Dialogue.
- **IPEX should be used as the sole platform of interparliamentary exchange**, and it should be improved further by, for instance, setting up automatic notifications also for regional parliaments where a certain number of parliaments/chambers (for instance: 4) indicate that they are scrutinizing a specific proposal.
- **Parliaments should be invited to participate at an earlier stage**, more specifically, when consultations take place.

- **Parliaments should play a role in the REFIT initiatives** of the European Commission as they are the best placed to identify the existing shortcomings and resulting needs.
- **Parliaments' specific importance as (national) organs of democratic representation** should be recognised and they should be attributed an enhanced status in the framework of Better Regulation.
- **The links between the IPEX and the REGPEX Platforms** should be improved.
- **A single 'subsidiarity hub'** should be created based on IPEX where reasoned opinions as well as contributions, CoR opinions, answers by the Commission, resolutions of the European Parliament etc. would be collected.

**Disclaimer and copyright.** The opinions expressed in this document are the sole responsibility of the authors and do not necessarily represent the official position of the European Parliament. Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy. © European Union, 2022.

External Authors: Diane FROMAGE

Research Administrator responsible: Eeva PAVY

Editorial assistant: Fabienne VAN DER ELST

Contact: [poldep-citizens@europarl.europa.eu](mailto:poldep-citizens@europarl.europa.eu)

This document is available on the internet at: [www.europarl.europa.eu/supporting-analyses](http://www.europarl.europa.eu/supporting-analyses)

PE 732.058

IP/C/JURI/IC/2021-073

Print ISBN 978-92-846-9390-0 | doi: 10.2861/799019 | QA-01-22-373-EN-C

PDF ISBN 978-92-846-9395-5 | doi: 10.2861/36234 | QA-01-22-373-EN-N