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# Political Motivation and Institutional Capacity: Assessing National Parliaments' Incentives to Participate in the Early Warning System

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## Abstract

*The Early Warning System gives national parliaments the right to intervene in European Union policy-making. This paper systematically investigates their incentives to submit reasoned opinions on subsidiarity infringements. To do so, it analyses the reactions of 40 parliamentary chambers to 342 draft legislative acts between 1 January 2010 and 31 May 2013 by ReLogit models (King and Zeng 1999a, 1999b). The paper finds that their political motivation rather than their institutional capacity explains cross-chamber and inter-temporal variation. Higher levels of party political contestation over EU integration and the salience of a draft legislative act have a positive effect on the odds of submitting reasoned opinions. Furthermore, economic recession has a negative effect, while chambers under a minority government are more active. However, the paper also finds that sectoral committees play an important role in the review process. The findings are discussed with reference to the role of national parliaments in EU democracy.*

Keywords: Early warning mechanism, national parliaments, political contestation, resources, salience

# Political Motivation and Institutional Capacity: Assessing National Parliaments' Incentives to Participate in the Early Warning System

*Katjana Gattermann & Claudia Heffler<sup>1</sup>*

## Introduction

With the rising impact of European Union (EU) decision-making on European citizens' daily life, the question of an adequate democratic order at Union level becomes ever more pressing. The most recent treaty changes introduced the 'Early Warning System' (EWS, see Protocol II, TEU) providing national parliaments with the right to intervene in EU policy-making by submitting reasoned opinions on draft legislative acts as part of the subsidiarity procedure. Provided they meet the threshold of the so-called 'yellow card' with one third of their votes the Commission is obliged to review its initiative and then decides whether to maintain, amend or withdraw it.<sup>2</sup>

In the literature the merits of the EWS are debated controversially. Some authors see the chance of national parliaments forming a 'virtual third chamber' at Union level (Cooper 2012), or potentially acting as 'Conseil d'état' of the EU (Kiiver 2011). Other studies point out a number of challenges for national parliaments' active engagement in the EWS: the short time period of eight weeks is considered a constraint (e.g., Neuhold 2011: 11, Paskalev 2009: 7, Knutelská 2011: 335); national parliaments may also lack resources in terms of time and staff (e.g., Fraga 2005: 499, Paskalev 2009: 6); or the review is centred on the European Affairs Committee (EAC) rather than sectoral committees (e.g., Winzen 2012: 660, Neuhold 2011, Hegeland and Neuhold 2002). A more structural criticism considers the basic set-up of the EWS which disregards the majority-opposition cleavage in parliament (Raunio 2009; 2010; Cooper 2012: 449; Kiiver 2006: 162-3).

First empirical assessments of the EWS have shown a very limited use of the new instrument (see Bellamy and Kröger 2012: 14; de Wilde 2012: 12; Heffler 2013; Neuhold 2011; Raunio 2010). However, the conditions under which parliaments issue reasoned opinions have not been empirically tested in a large-N study. This paper seeks to explain variation in the submission of reasoned opinions across 40 chambers in the EU-27. To do so, we systematically study their reactions to 342 draft legislative acts between 1 January 2010 and 31 May 2013. Even though the

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<sup>2</sup> Two votes are allocated to each parliament (one vote per chamber in bicameral systems). Only a simple majority of the votes is needed for an 'orange card', in which case the European Parliament and the Council provide their opinion on the proposal (Protocol 2, art. 7, TEU).

relative number increases over time, only 234 reasoned opinions have been submitted by individual chambers during that period. Hence, we assess under what conditions national parliaments actually do voice their concerns within the EWS. We estimate our results by specific multivariate logistic regression models for rare events data (see King and Zeng 1999a, 1999b).

Taking a rational choice perspective, we argue that the political motivation of national parliaments and their members (MPs) rather than their institutional capacity is able to explain variation in the extent to which national parliaments become involved in the EWS. The paper finds that higher levels of political contestation over EU integration inside parliamentary chambers have a positive effect on submitting a reasoned opinion, while party political contestation within the traditional left-right cleavage does not have any effect. Furthermore, the salience of the draft legislative act matters: the odds for submitting a reasoned opinion are higher when the draft proposes new legislation and when it is debated in the Council and voted on the plenary of the European Parliament (EP) before the end of the scrutiny period. And while chambers under a minority government are more active in the EWS, economic recession has a negative effect on the odds of submitting a reasoned opinion to the European Commission. As regards the institutional capacity, we only find that the time pressure national parliaments perceive during the eight weeks' period is exacerbated when it overlaps with the Christmas holidays. However, legislative elections falling into the scrutiny period do not seem to constrain national parliaments more than usual. Furthermore, counter our initial expectations we find that the odds for submitting a reasoned opinion decrease when COSAC meetings take place before the deadline and also decrease with higher numbers of administrative support staff available to MPs. However, we also find that if sectoral committees are responsible for drafting reasoned opinions – as opposed to the EAC or other parliamentary bodies, the odds for submitting a reasoned opinion are higher.

In the following we derive two sets of hypotheses related to institutional capacity and political motivation of national parliaments to become active in the EWS, respectively. Afterwards, we present our data and method before we provide our analysis. In the conclusions we discuss the implications of our findings with regard to the EU democratic deficit and the role of national parliaments in the EU political system.

## **Revisiting existing explanations: the institutional capacity of national parliaments**

As a precondition for the scrutiny of EU legislative proposals, a parliament must provide the basic structure in terms of resources. The following four hypotheses on the institutional capacity of national parliaments are derived from previous studies on the EWS. This study – for the first time

– empirically tests these existing explanations on timing, support staff, intra-parliamentary responsibilities for EU affairs, and inter-parliamentary cooperation from a pan-European perspective.

One main criticism of the EWS is the short time period of eight weeks which is challenging for procedural requirements in many parliaments (Neuhold 2011: 11, Paskalev 2009: 8). Eight weeks are short, especially when a draft proposal requires scrutiny by several committees and/or a plenary vote. While all national parliaments face similar time constraints, we expect that two conditions exacerbate the time pressure for MPs: the Christmas break and legislative elections. If the scrutiny period falls into the month of August, it is extended by the respective number of days to account for the summer recess. However, the Christmas break is not considered for an extension (Knutelská 2011: 335), which constrains the ability to review a certain draft legislative act even further.

H1.1: The odds of submitting a reasoned opinion are likely to be lower when the Christmas break falls into the scrutiny period.

Similarly, we expect that general elections taking place within the scrutiny period will have a negative effect on the ability of national parliaments to submit a reasoned opinion, as the respective chamber is in recess.

H1.2: The odds of submitting a reasoned opinion are likely to be lower when legislative elections to a respective chamber take place within the eight week scrutiny period.

Furthermore, the EWS is costly in the sense that an MP or their staff must allocate time to gathering information, to potentially coordinate with other national parliaments and finally, to draft and debate reasoned opinions (Fraga 2005: 499, Pasklavek 2009: 6). Some national parliaments are better equipped than others in terms of resources. Even though it is difficult to tell how many staff members are available for assistance in submitting reasoned opinions, more support staff is likely to increase a chamber's ability to participate in the EWS.

H2: Higher numbers of parliamentary support staff per MP are likely to increase the odds of submitting a reasoned opinion.

Linked to the resources are the responsibilities regarding the intra-parliamentary scrutiny process. Previous research has identified the importance of internal information processes (Winzen 2012: 660, Neuhold 2011, Hegeland and Neuhold 2002). Gattermann et al. (2013) identify a 'mainstreaming' trend inside parliaments whereby the scrutiny of EU affairs spreads beyond the responsibility of the EAC. We expect that the chances for submitting a reasoned opinion increase if a sectoral committee is in charge of the review process. There are two reasons for that. First, sectoral committees hold more expertise in their specific policy field and understand the

relevance of a proposed legislative act at an early stage in the policy cycle. Second, the division of labour among sectoral committees involves a higher number of MPs and thus increases the capability to deal with policy proposals. In most national parliaments reasoned opinions are voted upon by the plenary followed by the EAC. Nevertheless, there is considerable variation across chambers regarding the review process.

H3: If a sectoral committee is in charge of drafting a reasoned opinion the odds of submitting a reasoned opinion are likely to be higher than for the EAC in sole responsibility.

However, the institutional capacity not only concerns parliamentary resources. Research suggests that inter-parliamentary cooperation plays an important role in the EWS, especially seeing that 18 reasoned opinions are required to meet the threshold of a 'yellow card' (e.g., see Cooper 2012; Neuhold 2011). Parliamentarians use several, distinct forums for formal and informal cooperation such as Inter-parliamentary Conferences, Joint Committee Meetings, or bilateral visits. Neuhold (2011) emphasizes that the Network of National Parliaments Representatives in Brussels is an important coordination mechanism in the EWS. In our study we are unable to test varying forms of formal and informal cooperation. However, COSAC offers a good starting point as the meetings take place on a regular basis providing an opportunity to exchange on draft legislative acts.

H4: If a COSAC meeting takes place during the scrutiny period the odds of submitting a reasoned opinion are higher.

## **Beyond institutional capacity: National parliaments' political motivation to submit reasoned opinions**

While institutional capacity plays an important role for understanding cross-chamber variation in the EWS, we argue that it is not a sufficient explanatory factor. Rather, we contend that the political motivation of national parliaments and their members is crucial for explaining the submission of reasoned opinions. In particular, we argue that varying degrees of party political contestation inside parliaments, the salience of the draft legislative act, a country's economic performance and the type of government matter in the EWS.

The low incentives of MP involvement in EU affairs are generally explained by a lack of politicization of EU issues. Politicization can be defined as a process in which elite conflict about an issue leads to intensified debates which are then transported to the general public (de Wilde 2011). In their seminal work, Hooghe and Marks (2009) showed that EU integration is a topic which mainstream political parties rather avoid in domestic debates as it runs counter the left-right logic and endangers intra-party cohesion. Conversely, small extremist parties on either side of the political spectrum with a coherent position on EU integration have an incentive to place

EU issues on the agenda (see also de Vries 2007; Kriesi 2007; Steenbergen and Scott 2004, Green-Pedersen 2012). Thus, the nature of the party system and the dispersion of the party positions regarding EU integration have an impact on the incentives of MPs to become involved in EU affairs. Schuck et al (2011) find that higher degrees of party political contestation in the domestic electoral arena impact on the visibility of EU election campaigns in national media. Even though it is a media study, their idea can be extended to the relationship between party political contestation *inside* a parliament and the degree to which MPs become involved in the EWS. Gattermann (2013) already develops this argument further. She hypothesises that higher levels of intra-parliamentary political contestation have a positive effect on the incentives of MPs to participate in joint or inter-parliamentary committee meetings in Brussels as a direct means to influence EU policy making. Although her findings do not lend support to this assumption, it might become applicable for the EWS.

Raunio (2005) did not find a connection between party positions on European integration and the degree of general parliamentary scrutiny of EU affairs measured by its formal powers. However, we expect that for the actual use of the specific tool of the EWS the degree to which the EU is contested inside national parliaments has an impact. The allocation of competences is not a mere judicial question, but encompasses a political evaluation of where EU integration should lead to.<sup>3</sup> We argue that conflicting opinions on European integration among political party groups will result in intensified debates and consequently, to an increased activity in the EWS.

H5.1: Higher levels of party political contestation over EU integration are likely to increase the odds of submitting a reasoned opinion.

However, within the EWS MPs are bound to restrict themselves to the question of the proper allocation of competencies either to the EU or the member state level (Cooper 2012: 450, Knutelská 2011: 331; Jančić 2012: 83). This differs much from the usual legislative work whereby parliamentarians evaluate the political desirability of a policy proposal (Sprungk 2013: 548). Party groups are usually aligned along left-right lines. The legislative work and political evaluation is thus framed on this dimension. However, subsidiarity control might escape this logic.

H5.2: Varying levels of party political contestation inside a national parliament over the left-right scale are likely to have no effect the submission of a reasoned opinion.

Furthermore, we expect the salience of draft legislative acts to raise the incentives for national parliaments' activity in the EWS. We consider three indicators for the salience of a policy proposal in a national parliament. First, we expect draft legislative acts which introduce new legislation to be more frequently scrutinized than legislation that amends or repeals existing

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<sup>3</sup> In the Convention on the Future of Europe in 2003, subsidiarity control was assigned to national parliaments not as judicial review, but as political task. Since the concept of subsidiarity is not precisely defined it gives some leeway for a normative assessment of which level will be able to deliver the best solution to a certain policy problem (Fraga 2005).



legislation. New legislation is likely to cause more significant changes than the revision of existing legislative acts (see de Ruiter 2013: 4). We therefore expect MPs to be more motivated to scrutinise these acts, which may return higher benefits in terms of policy impact.

H6.1: If the draft legislative act proposes new legislation the odds of submitting a reasoned opinion are likely to be higher than for proposals that amend or repeal existing legislation.

Similarly, the salience of a draft legislative act can be measured by the involvement of the EU institutions. In particular, we expect that if either the EP or the Council engage with a proposal before the end of the eight-week deadline, this has an impact on MPs involvement – provided they have complete information. We expect such proposals to be more salient since not many draft legislative acts make it onto the Council's agenda in due course. Government officials or MEPs could inform MPs on the relevance of the policy proposal through informal channels. Furthermore, a government might urge a national parliament to submit a reasoned opinion in order to support its negotiation strategy. If a government realises during a Council debate that it is being isolated in the discussions, a reasoned opinion from its parliament could be used as a bargaining position in the subsequent negotiations.

H6.2: If the draft legislative act is debated in the Council before the end of the scrutiny period, the odds of submitting a reasoned opinion are likely to be higher.

H6.3: If the European Parliament votes on the draft legislative act before the end of the scrutiny period, the odds of submitting a reasoned opinion are likely to be higher.

Related to salience is the circumstance that the financial and economic crisis hit Europe at about the same time as the Lisbon Treaty came into force. We assume that in states under economic recession, parliamentarians will focus on resolving the economic downturn and the social and political consequences thereof. One could argue that EU issues have gained more salience through the crisis, and citizens may perceive developments at EU level as more relevant for their daily lives. However, assuming that the primary goal of MPs is re-election, they concentrate on ways to resolve the crisis in their home country and care less about subsidiarity issues. Furthermore, under these circumstances resources will less likely be used for a subsidiarity review of Commission proposals.

H7: The odds of submitting a reasoned opinion are likely to be lower when a country experiences economic recession.

Lastly, we consider the frequent criticism of the EWS with regards to the distribution of power between the executive and the legislature. The EWS does not account for the fact that the main cleavage in modern states runs between majority and opposition parliamentary party groups. It seems unlikely that the majority in parliament adopts a reasoned opinion which opposes the

position of its own government (Raunio 2009; 2010; Cooper 2012: 449; Kiiver 2006: 162-3). As the Commission consults national governments before launching a policy proposal, one may assume the general support of member states governments. Hence, we expect national parliaments under a minority government to be more active in the EWS, as the parliamentary majority is rather independent from the government in this case (Hegeland, forthcoming).

H8: The odds of submitting a reasoned opinion are likely to be higher when a national parliament supports a minority government.

## Data and Method

To test our argument, we designed a dataset which comprises 342 draft legislative acts transmitted by the European Commission to national parliaments under the EWS after 1 January 2010. For each of them we hold information about the date of the *lettre de saisine*, i.e. the official referral by the Commission, and the deadline for submitting reasoned opinions.<sup>4</sup> The final deadline considered in our data is 31 May 2013 as the information for 2012 (78 draft legislative acts considered here) and 2013 (31) provided via IPEX<sup>5</sup> were last updated on 6 June 2013. The remaining data for 2010 (82 draft legislative acts) and 2011 (151) were provided by the Legislative Dialogue Unit of the European Parliament/ Directorate for Relations with National Parliaments. All data were complemented by proposal-specific information from IPEX and the Legislative Observatory of the European Parliament.<sup>6</sup>

Our dependent variable is a binary variable which is 1 when a chamber has provided a reasoned opinion with respect to an individual legislative proposal and 0 if it has not done so.<sup>7</sup> We consider all 40 chambers in 27 EU countries (excluding Croatia). Hence our overall N for the dependent variable is 13,680.<sup>8</sup> With only a total of 234 reasoned opinions submitted during the time period of investigation, our dependent variable is extremely skewed towards zero (see Table A1). A logit model lies at hand, but the majority of time-fixed effects predict zero perfectly. At the same time, we are unable to distinguish between chamber- and country-level effects because 14 out of 27 countries have unicameral chambers. This constrains within-country variation. Country dummies, on the other hand, lead to multicollinearity problems with many of our independent variables, some of which exhibit little variation over time. Hence, we chose logistic regression models for rare events data (ReLogit) which were developed by King and Zeng (1999a, 1999b). For this, we conducted our analysis in Stata 12 using the ReLogit software designed by Tomz et al.

<sup>4</sup> During the period of investigation, there were actually 353 draft legislative acts, but the exact dates of the *lettre de saisine* were not available for ten of them. One legislative act was withdrawn.

<sup>5</sup> 'Inter-parliamentary EU information exchange'

<sup>6</sup> We thank Linda Dieke and Na-Hyeon Shin for their research assistance.

<sup>7</sup> Note that the two Spanish chambers have jointly submitted their reasoned opinions.

<sup>8</sup> Note that N is smaller in some of our models as many independent variables have missing values (see Appendix).

(1999). To account for between-country variation, we estimate all models with standard errors clustered by country. To control for variation over time we include a continuous variable: the year from the document reference of a draft legislative act issued by the European Commission.

Our first set of independent variables responds to the capacity of national parliaments to become actively involved in the EWS. We accounted for the extension of the scrutiny period applicable for the month of August in our data. However, for the Christmas period no extension is granted to national parliaments (H1.1). Our dummy variable *Christmas* is 1 when any day between 24 December and 1 January falls into the scrutiny period. To account for another type of time pressure (H1.2) we include a dummy variable that indicates whether legislative elections for a given chamber were held before a respective deadline (*Election*).

To test our hypothesis about the role of administrative support (H2), we include the number of staff per individual MP in our models (*Staff per MP*) to allow for cross-chamber comparison. It ranges from 0.48 (Malta) to 5.98 (Latvia). We obtained this information from the Interparliamentary Union (2013).

The importance of the sectoral committee (H3) is captured by two dummies: one indicates whether the sectoral committee is in charge of drafting a reasoned opinion (*SC drafts RO*); the other one assigns this right to the EAC (*EAC drafts RO*) (source: Legislative Dialogue Unit of the European Parliament/ Directorate for Relations with national Parliaments (2013)). The reference categories for both variables include the administration (Belgian Chamber of Deputies), the joint responsibilities of both committees and a joint committee between two houses (Spanish Parliament).

To assess the impact of formal coordination activities between national parliaments (H4) we include the variable *COSAC* in the models. It ranges from 0, in case no meeting took place during the scrutiny period, to 2, when both the Chairs of the EACs and the ordinary members of EACs met during that time.

Our second set of independent variables corresponds to the motivation of national parliaments and their members to submit a reasoned opinion. According to our initial hypothesis (H5.1) we expect that higher levels of party political contestation over the EU increase the odds for national parliaments to submit reasoned opinions. It is measured by the weighted parliamentary party system dispersion (WPPSD). For this we adopted the weighed party system dispersion employed by Schuck et al. (2011) who rely on Alvarez and Nagler (2004). The only difference to their measure is that we include the seat share of a respective parliamentary party as opposed to the vote share (see also Gattermann 2013). For our analysis we assume that party political contestation *inside* a parliament matters more than the party competition in the electoral arena. Hence:

$$WPPSD = \sqrt{\sum_{j=1} SS_{jk} (P_{jk} - \bar{P}_k)^2} \quad (1)$$

where  $SS_{jk}$  is the seat share and  $P_{jk}$  is the position of party  $j$  in country  $k$  towards EU integration, and  $\bar{P}_k$  is the weighted mean of all party positions in country  $k$ . We obtained information on the general orientation of the party leadership towards EU integration, which ranges from 1 (strongly opposed) to 7 (strongly in favour), from the Chapel Hill expert surveys of 2006 and 2010 (Hooghe et al. 2010; Bakker et al. 2012). We employ a similar measure to calculate the party political contestation on the left-right dimension inside parliamentary chambers (H5.2). For this, we took the position of each party on the left-right scale from the respective Chapel Hill expert surveys. It ranges from 0 (extreme left) to 10 (extreme right). Both variables (*EU Party PolCon* and *LR Party PolCon*) were re-calculated after each general election. Unfortunately, the Chapel Hill expert surveys do not include Cyprus, Luxembourg and Malta and do not yet consider newer political parties that stood at some of the latest elections (e.g., Greece in June 2012, in Slovenia in 2011, Italy in 2013). Hence, both variables have a few missing values (see Appendix).

Next, we include four dummy variables in our models to assess the salience of a draft legislative act (hypotheses 6.1 to 6.3). *New legislation* corresponds to H6.1 and is 1 in 26.3% of all cases (see Appendix). *Debate in Council* indicates whether a Commission proposal was debated in the Council before the end of the deadline (H6.2). To operationalize H6.3, we consider two dummies: *Vote in EP committee* and *Vote in EP plenary*. Both variables assess whether an EP committee or the plenary have already dealt with the proposal before the deadline. We obtained information on these variables from the Legislative Observatory of the EP. The only problem with these variables, however, is that we assume that national parliaments have complete information about what is going on in the EU institutions.

We operationalize our seventh hypothesis on the impact of the financial and sovereign debt crisis as a dummy variable (*Recession year in MS*). It indicates whether a country was in recession during a given year of the period under investigation. That way we not only account for debtor states within the Eurozone but for all countries that have undergone severe economic recession. To calculate this variable we obtained information on GDP growth compared to the previous year for each country from Eurostat (2013).

To assess the effect of the type of government (H8), we include a dummy variable (*Majority gov.*). Since in most countries the government is electorally dependent only on the lower house or unicameral chamber, upper houses are excluded from some models, which considerably decreases our overall N. Caretaker governments are not considered in the analysis.

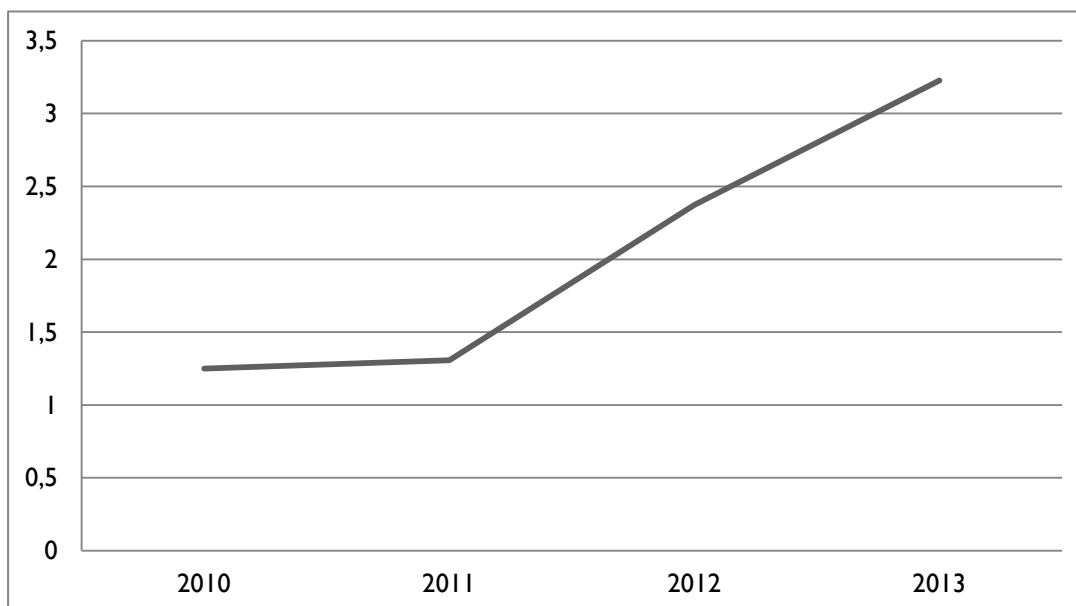
Finally, we add several controls to our models: *Monti II* is a dummy referring to the crucial case in which the threshold for a yellow card was met for the first time with 19 reasoned opinions in

total.<sup>9</sup> Hence, we expect this variable to have a positive and significant effect. *Length EU member* is a continuous variable measuring the duration of EU membership for a given country/national parliament in a respective year of subsidiarity check. *Upper House* is a dummy with the reference categories of lower house and unicameral chamber. The dummy variable *Presidency* indicates whether a given country/national parliament was responsible for the Rotating EU Presidency at a given time. We expect that a parliamentary chamber is less likely to submit a reasoned opinion under these circumstances. Firstly, it might have less time to scrutinise a draft legislative act than it would normally have. Secondly, it might also find other, more direct channels of influence. With regards to our control *Year*, we expect increasing activity in the EWS over time since the EWS was only introduced with the Lisbon Treaty requiring formal adaptation to it.

## Results

Before we turn to the explanatory factors, Figures 1 and 2 provide an overview of the inter-temporal and cross-chamber variation, respectively, in the submission of reasoned opinions. Figure 1 shows the developments over time. Overall, only 234 reasoned opinions were provided by national parliaments. However, the graph demonstrates that there was an increase in the number of reasoned opinions relative to the number of legislative proposals over the years – even though there was roughly the same amount of draft legislative acts in 2012 (78) than in 2010 (82).

**Figure 1** Percentage of instances per year in which reasoned opinions were submitted

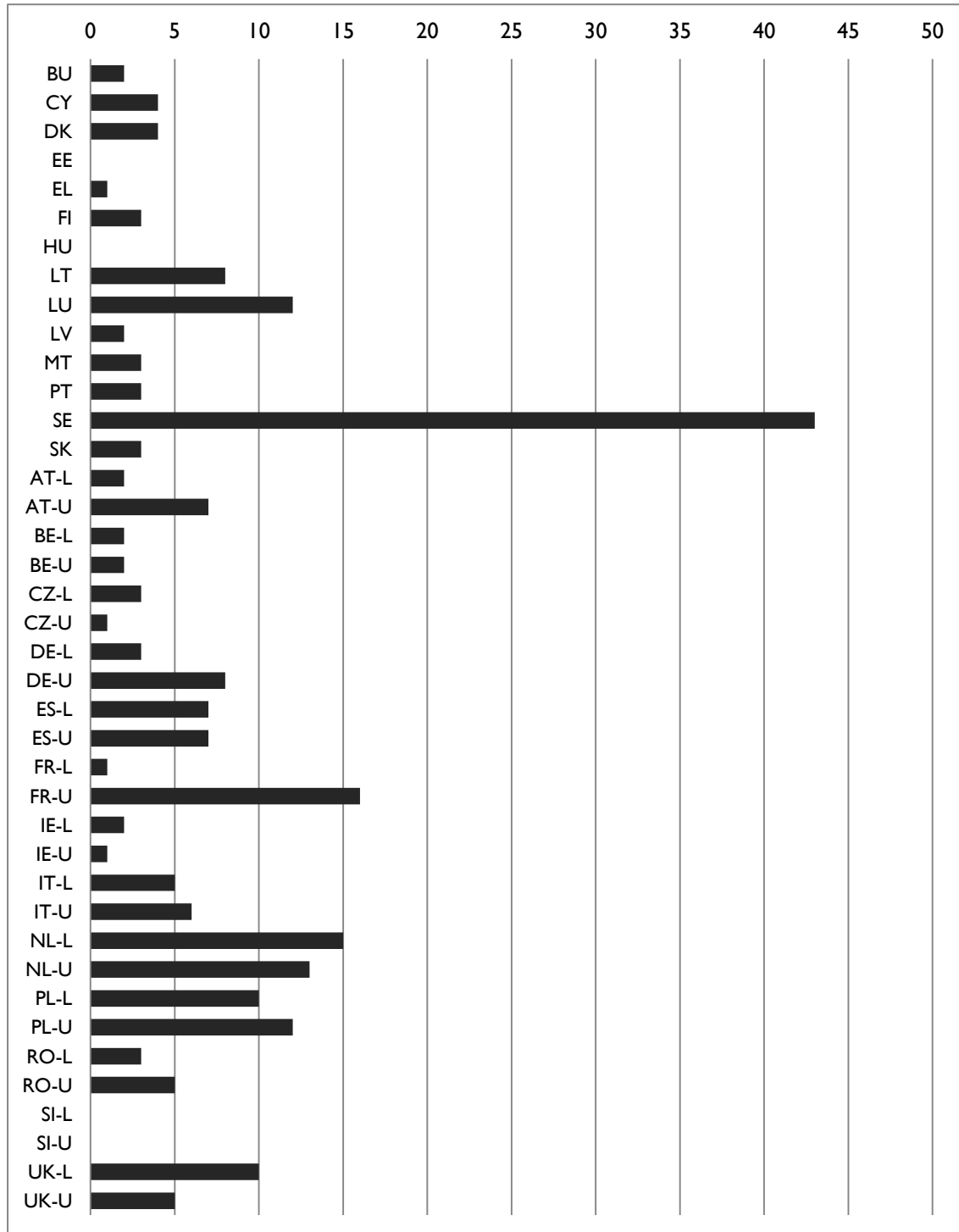


Notes: The time period of investigation ends on 31 May 2013; the year is taken from the official document reference.

<sup>9</sup> 'Proposal for a Council regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services', COM(2012) 130 final (21.3.2012)

Figure 2 depicts the total number of reasoned opinions each chamber has submitted during the period of investigation. It shows that the Swedish Riksdag is by far the most active chamber in the EWS with 43 submissions in total; followed by the French Senate (16 reasoned opinions) and the Dutch Tweede Kamer (15). In contrast, none of the Estonian, Hungarian or Slovenian parliamentary chambers submitted any reasoned opinion over the last few years. The remaining chambers have voiced their concerns over a draft legislative act at least once.

**Figure 2** Number of reasoned opinions per chamber during the time period of investigation



Notes: The time period of investigation lies between 1 January 2010 and 31 May 2013; the maximum number of reasoned opinions which could have possibly been submitted by a chamber is 342 in our data.

So, what explains inter-temporal and cross-chamber variation in parliamentary activity under the EWS? We seek to answer this question by the ReLogit models provided in Table 1. The coefficients ( $\beta$ ) presented in the models are the log odds on the dependent variable, i.e. of a chamber submitting a reasoned opinion with regards to a respective draft legislative act. The odds for dummy variables are calculated by taking the exponential of the coefficients:  $\exp(\beta)$ . For continuous independent variables the odds are derived as follows:  $(\exp(\beta) - 1) * 100$ .

Model 1 tests the effects capturing the capacity of national parliaments to become active players in the EWS. Models 2 to 4 include the explanatory factors related to the political motivation of national parliaments and their members to submit a reasoned opinion under the EWS. Here, Model 3 accounts for missing values with regards to *EU Party PolCon*, *LR Party PolCon* and *Majority gov*. The same specifications apply for the last three models (5 to 7), which represent the full models. All models include the five control variables presented in the previous section.

We begin with the analysis of the factors that relate to the capacity of national parliaments to become actively engaged in the EWS. Overall, we find little support for the respective hypotheses. Only *Christmas* and *SC drafts RO* have the expected effects on the odds of submitting a reasoned opinion. Our results show that if the scrutiny period coincides with the Christmas holidays, the odds are only about 0.61 and 0.66 the times compared to all other periods during the year (H1.1). This finding supports criticism raised by national parliaments themselves: they are severely constrained in their ability to review a draft legislative act under the EWS during the Christmas period (e.g., see Knutelská 2011: 335). However, legislative elections taking place during the scrutiny process do not have any effect. This means that national parliaments are not more constrained than usual if their house is in recess for legislative elections during the scrutiny period. H1.2 thus has to be rejected.

Furthermore, if a sectoral committee has the right to draft a reasoned opinion as opposed to the EAC, joint parliamentary bodies or the administration the odds for actually submitting a reasoned opinion on a draft legislative act are 2.59 and 3.49 times higher – at least in the full models 6 and 7 (H3). Conversely, if the EAC is in charge this does not have any effect. Taken together, these findings underline our initial assumptions: division of labour inside a chamber increases the chances for national parliaments to more actively engage in the EWS. At the same time, it also points to the positive effect of parliamentary mainstreaming of EU affairs on the active involvement of national parliaments in EU policy-making (see Gattermann et al. 2013).

Table I ReLogit Models

Regressor	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6	Model 7
<b>Capacity</b>							
Christmas	-.49*** (.17)				-.42** (.20)	-.35 (.23)	-.41** (.18)
Election	-.29 (.50)				-.24 (.52)	-.04 (.63)	.32 (.67)
Staff per MP	-.07 (.09)				-.07 (.09)	-.31* (.18)	-.39* (.23)
SC drafts RO	.81 (.80)				.58 (.82)	.95* (.55)	1.25** (.56)
EAC drafts RO	-.08 (.28)				-.21 (.33)	-.13 (.37)	-.01 (.53)
COSAC	-.52*** (.17)				-.45** (.18)	-.45** (.19)	-.50*** (.19)
<b>Motivation</b>							
EU Party PolCon		.07* (.04)		.06 (.06)		.09** (.04)	.11* (.06)
LR Party PolCon		.00 (.07)		.03 (.08)		-.02 (.04)	-.05 (.05)
New legislation		.63*** (.17)	.64*** (.17)	.73*** (.18)	.58*** (.19)	.58*** (.20)	.69*** (.18)
Council debate		.33** (.13)	.35*** (.13)	.35*** (.13)	.41*** (.12)	.38*** (.12)	.37*** (.13)
Vote in EP Committee		-1.27 (.82)	-.99 (.61)	-.82 (.70)	-1.00 (.62)	-1.25 (.81)	-.90 (.71)
Vote in EP plenary		2.25** (.93)	1.85*** (.69)	1.35** (.67)	1.76** (.71)	2.17** (.93)	1.26* (.67)
Recession year in MS		-.72* (.41)	-.69** (.33)	-.74** (.35)	-.60* (.35)	-.68** (.33)	-.34 (.37)
Majority gov.				-1.15* (.64)			-.68* (.41)
<b>Controls</b>							
Monti II	3.44*** (.38)	3.49*** (.46)	3.39*** (.38)	4.18*** (.57)	3.76*** (.42)	3.99*** (.54)	4.58*** (.63)
Length EU member	.00 (.01)	.01 (.01)	.01 (.01)	.00 (.01)	.00 (.01)	.01 (.01)	.02 (.01)
Upper house	.09 (.34)	.35 (.33)	.08 (.30)		.09 (.33)	.67 (.43)	
Presidency	-.58 (.92)	-1.60* (.86)	-.59 (.67)	-1.17** (.55)	-.57 (1.00)	-2.01* (1.18)	-1.16 (.83)
Year	.18* (.10)	.45** (.18)	.44*** (.12)	.55*** (.16)	.28** (.12)	.27 (.17)	.34** (.14)
Constant	-356.65* (209.16)	-901.28** (362.96)	-888.82*** (235.34)	-1114.31*** (319.09)	-564.69** (235.71)	-542.96 (334.21)	-684.58** (272.82)
Chambers	36	33	40	24	36	30	23
df	11	12	10	12	16	18	18
N	12312	10699	13680	7525	12312	9707	7183

Notes: \*  $p < .1$ ; \*\*  $p < .05$ ; \*\*\*  $p < .01$ , country-clustered standard errors in parentheses; dependent variable: binary variable indicating whether a chamber has submitted a reasoned opinion or not for each draft legislative act; Models 4 and 7 exclude all upper houses.



The remaining hypotheses that are related to capacity, nevertheless, do not receive much support in our statistical analysis. We even find a negative effect of administrative support staff on our dependent variable in the full models. Every more member of staff available for individual MPs decreases the odds of submitting a reasoned opinion by about 26.66% to 32.30%, controlling for everything else. We are unable to provide a plausible explanation for this phenomenon. Further research is needed to investigate this effect. Furthermore, COSAC meetings also have a negative effect: holding everything else constant, the odds decrease by about 36.24% to 40.55% with every COSAC meeting that takes place during the scrutiny period (maximum is two). This is a peculiar result if we compare it to the findings of Cooper (2013). He argues that a COSAC meeting which was organised by the Danish Presidency a month before the deadline for the Monti II regulation influenced at least the Latvian Parliament in their decision to submit a reasoned opinion. Our control variable Monti II has a significant, positive effect on the odds of national parliaments to participate in the EWS. However, Monti II was the first – and up until the end of the period under investigation – the only successful yellow card raised by national parliaments. As the interaction effect between the post-Monti II period and COSAC meetings is not statistically significant (not shown here), Monti II might just be a specific case.

Nevertheless, we find wide-ranging support for our argument as regards the factors that relate to the political motivation of national parliaments and their members to submit a reasoned opinion under the EWS. According to hypothesis H5.1 we expect higher levels of political contestation over EU integration to increase the odds of national parliaments to submit a reasoned opinion. Our results lend support to this hypothesis. With every one unit increase in dispersion among political parties inside a chamber, the odds to submit a reasoned opinion increase by about 7.25% (Model 2). The effect remains positive and significant (with 9.42% and 11.63%, respectively) in the full models (6 and 7), holding everything else constant. This finding shows that political contestation is an important factor for explaining variation in the submission of reasoned opinions by national parliaments. The more the EU is contested inside a parliamentary chamber, the higher the incentives of their members to raise their criticisms towards legislative proposals of the European Commission. In line with hypothesis H5.2, party political contestation over the traditional left-right cleavage does not have any significant effect on our dependent variable. Following our argumentation above, this suggests that the traditional conflict along left-right lines hardly matters for the subsidiarity review.

Furthermore, we also find support for hypotheses on the salience of the draft legislative act. As expected (H6.1), the odds for submitting a reasoned opinion are between 1.79 and 2.08 times higher when a draft legislative act specifies new legislation as opposed to proposals that amend or repeal existing legislation. This finding is plausible if we assume that new legislation entails more dramatic changes to the status quo and represents an opportunity for MPs to influence EU policy-making (cf. de Ruiter 2013: 4).

The salience of the legislative proposal is also measurable by the activity of EU institutions. If the proposal was debated in the Council before the end of the deadline the odds are between 1.39 and 1.51 higher compared to proposals which were only dealt with in the Council after the deadline. We expect such proposals to be rather salient as not many draft legislative acts make it onto the Council's agenda in due course. And as argued above, governments have an opportunity to urge their parliaments to raise their concerns over a draft legislative act. The effect holds in all models and when controlling for the remaining factors. Similarly, the results show that if a vote in the EP plenary on a given draft legislative act takes place during the eight-week period the odds are even about 3.53 to 9.49 times higher for national parliaments to submit a reasoned opinion under the EWS. However, if an EP committee decides on a draft legislative act before the end of the scrutiny period, this does not have any impact. Supposedly, national parliaments are more likely to notice that the EP plenary has voted on a proposal than a committee decision behind closed doors.

Our results furthermore suggest that the EWS is considered less salient at times a country experiences economic recession (H7). Under economic recession, the odds for submitting a reasoned opinion are 0.48 and 0.55 times the odds of periods in which a country's economy is doing fairly well – again holding everything else constant and as far as Models 2 to 6 are concerned. The reason for this might be connected to the political importance: in times of crisis, MPs have more important problems to solve than the question of competences in EU decision-making.

Lastly, our final hypothesis (H8) also receives support: Holding everything else constant – and considering lower houses and unicameral chambers only, the odds are 0.32 (Model 3) and 0.51 (Model 7) times the odds for chambers supporting a majority government than for national parliaments which tolerate a minority government. Our findings support the assumption the control of the government over their parliamentary majority constrains an active use of the EWS.

The remaining control variables hardly have any effect – apart from the year and the Presidency. With every more year the EWS is in operation, the odds for submitting a reasoned opinion increase by about 19.72% to 73.33%. This finding corresponds to Figure 1, which shows that the relative number of submissions in the EWS increases over time. Models 2, 4 and 6 furthermore show that the odds are about 0.13 to 0.31 times lower for chambers under the Rotating Presidency compared to others.

## Conclusions

The paper set out to study the variation of national parliamentary chambers to submit a reasoned opinion under the EWS. Thereby it – for the first time – investigated a large set of draft legislative acts and considered all parliamentary chambers in the EU-27 between 1 January 2010 and 31 May

2013. It proposed to distinguish the explanatory factors by the political motivation of national parliaments and their members, on the one hand, and their capacity to submit a reasoned opinion on the other. Overall the paper found that the factors related to the political motivation slightly better serve to explain the activity of national parliaments in the EWS.

The positive effect of party political contestation over EU integration on the likelihood of submitting reasoned opinions supports our assumption about the relevance of politicization for increasing the EU's legitimacy. According to our findings, political contestation over EU integration is important for the success of the EWS. Furthermore, the salience of the draft legislative act itself has a significant effect on whether national parliaments submit a reasoned opinion or not: the paper found that the odds for submitting a reasoned opinion are higher for new legislation, when it is debated in the Council and voted on the EP plenary before the end of the scrutiny period. Party coherence within majority governments, however, represents a major constraint to the active use of the EWS: Chambers tolerating a minority government are more active within the EWS. Taken together, it is MPs' incentives and awareness which encourage proactive EU scrutiny more than the capacity of the national parliament. Future research should therefore take into account the relevance of party political contestation for parliamentary involvement in EU affairs.

At the same time, the degree of political contestation over the left-right dimension does not have any impact. This lends support to the understanding of Sprungk (2013) that the EWS differs from the regular legislative work. In the debate about whether subsidiarity control is exercised in its legal sense or used strategically for political purposes (i.e., in political bargaining among member states) our findings suggest that the EWS escapes the left-right logic. Rather, the subsidiarity procedure is applied in light of concerns over European integration. Furthermore, our finding that economic recession has a negative impact on the submission of reasoned opinions supports this interpretation. In case of severe economic crisis, the EWS is not an instrument to demonstrate activity in EU affairs before the electorate since it is primarily dealing with the allocation of competences.

However, most factors related to the institutional capacity of national parliaments hardly have any effect on the odds of actively taking part in the EWS. Rather unsurprisingly, the Christmas break is constraining national parliaments to scrutinise a draft legislative act within the eight weeks' period. Nevertheless, national parliaments are not more constrained than usual if their house is in recess for legislative elections. Similarly, we found that COSAC meetings and the higher numbers of parliamentary support staff significantly decrease the odds of submitting a reasoned opinion. Both findings are rather peculiar as existing research would suggest otherwise. More research is needed to substantiate these effects, especially seeing that the latter variable has a few missing values. Within 'capacity', the only factor that has a positive effect on the odds of

submitting reasoned opinions is when the sectoral committee is in charge of drafting them. The results therefore suggest that those parliaments which have undergone 'mainstreaming' (see Gattermann et al. 2013) are able to actively influence the functioning of the EWS. Future research might also find a way to statistically disentangle within- and between-country effects to further investigate the differentiated effects of political motivation and institutional capacity.

The advantages of our study, which lie in the systematic, large-N study of the incentives of 40 parliamentary chambers across Europe, represent pitfalls at the same time. Not only are we unable to explain the negative effects of either COSAC meetings or administrative support; but we are also not able to account for any informal coordination between national parliaments, such as through IPEX or via National Parliaments Permanent Representatives (e.g., see Neuhold 2011). Informal coordination might trigger incentives to submit a reasoned opinion, especially seeing that the yellow card requires at least 18 reasoned opinions (see Cooper 2013). Furthermore, while we control for some time effects, we are unable to account for the path dependence of an individual chamber. Some national parliaments might become disheartened over time when seeing that their reasoned opinions hardly have any impact: their opinion does not necessarily translate into policy (see Raunio 2010). Conversely, some national parliaments might develop new, cost-efficient internal procedures over time to participate in the EWS. Lastly, our analysis rests on the assumption – in line with rational choice theory – that national parliaments and their members have complete information about the developments at the EU level suggesting that they are able to assess the salience of a legislative proposal. Our results imply they have, but they could also be triggered by other explanatory factors. Future research should further investigate this phenomenon.

The EWS gave national parliaments a new opportunity to actively scrutinise the allocation of competences between member states and the EU. Despite the low frequency of reasoned opinions by national parliaments, we believe that the EWS has the potential to contribute to combatting the EU democratic deficit (see Føllesdal and Hix 2006) because it is mainly their political motivation, rather than sheer capacity, which matters for the degree to which they become involved. Their activity in the EWS is particularly influenced by party political contestation over EU integration and dependent on the salience of draft legislative acts themselves. Thereby they provide a political linkage between EU policy-making and their represented in the domestic context. These results may thus also inform proposals for greater democratic self-government at the national level (Chalmers 2013).

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## Appendix

**Table A1** Descriptive statistics of the dependent variable

	<b>N</b>	<b>Min</b>	<b>Max</b>	<b>M</b>	<b>SD</b>
Reasoned opinion provided	13680	0	1	0.017	0.130

**Table A2** Descriptive statistics of the continuous independent variables

	<b>Valid N</b>	<b>Missing</b>	<b>Min</b>	<b>Max</b>	<b>M</b>	<b>SD</b>	<b>Notes</b>
Length EU member	13680	0	3.00	61.00	28.02	21.89	
Year	13680	0	2010	2013	2011.17	.90	
EU Party PolCon	10699	2981	1.42	17.78	11.29	3.96	Data missing for: LU, CY, MT, DE Bundesrat, SI Council, and the elections in EL June 2012, IT 2013, RO 2012, SK 2012, SI lower house 2011
LR Party PolCon	10699	2981	8.40	26.27	18.96	3.96	
Staff per MP	12312	1368	.48	8.06	2.83	1.57	Data missing for: NL Eerste Kamer, IT Senate, IE both chambers

**Table A3** Frequencies of the categorical independent variables

Variable	Categories	N	%	Valid %	Notes
Election Year	No	10116	73.9	73.9	
	Yes	3564	26.1	26.1	
	Total	13680	100.0	100.0	
Christmas	No	10040	73.4	73.4	
	Yes	3640	26.6	26.6	
	Total	13680	100.0	100.0	
COSAC	0	5280	38.6	38.6	
	1	8200	59.9	59.9	
	2	200	1.5	1.5	
	Total	13680	100.0	100.0	
New legislation	No	10080	73.7	73.7	
	Yes	3600	26.3	26.3	
	Total	13680	100.0	100.0	
Council debate	No	10400	76.0	76.0	
	Yes	3280	24.0	24.0	
	Total	13680	100.0	100.0	
Vote in EP committee	No	12920	94.4	94.4	
	Yes	760	5.6	5.6	
	Total	13680	100.0	100.0	
Vote in EP plenary	No	13400	98.0	98.0	
	Yes	280	2.0	2.0	
	Total	13680	100.0	100.0	
Majority gov.	No	1334	14.4	14.8	Disregards caretaker governments (IT 2011-2013, EL 2012); excludes upper houses
	Yes	7709	83.5	85.2	
	Total	9043	97.9	100.0	
	System missing	191	2.1		
Upper house	No	9234	67.5	67.5	
	Yes	4446	32.5	32.5	
	Total	13680	100.0	100.0	
Presidency	No	12985	94.9	94.9	
	Yes	695	5.1	5.1	
	Total	13680	100.0	100.0	
SC drafts RO	No	11286	82.5	82.5	
	Yes	2394	17.5	17.5	
	Total	13680	100.0	100.0	
EAC drafts RO	No	6498	47.5	47.5	
	Yes	7182	52.5	52.5	
	Total	13680	100.0	100.0	
Recession year in MS	No	9342	68.3	68.3	
	Yes	4338	31.7	31.7	
	Total	13680	100.0	100.0	

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