

OPAL Online Paper Series | 6/2012

# **Why the Early Warning Mechanism does not Alleviate the Democratic Deficit**

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University of Cologne

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**Series Editors:** Thomas Christiansen & Ariella Huff

**ISBN:** 978-90-818813-4-0

# Why the Early Warning Mechanism does not Alleviate the Democratic Deficit

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## I. Introduction

After the Lisbon Treaty was signed in December 2007 by the government leaders of the European Union (EU) member states, Dutch Prime Minister Jan-Peter Balkenende returned home to the Netherlands triumphantly. He presented a 'major Dutch victory' at the final intergovernmental negotiations to his domestic constituency. The government leaders had upgraded the so called Early Warning Mechanism (EWM) which strengthened the direct involvement of national parliaments in EU decision-making processes. Beyond the 'yellow card' option included in the Treaty Establishing a Constitution for Europe (TECE), the new Lisbon Treaty now also included a stronger 'orange card' procedure. Following the failure of the TECE in the French and Dutch referendums of June 2005, Balkenende had argued that Dutch misgivings with that TECE were largely fueled by the perceived democratic deficit of the European Union. In particular, Dutch citizens objected to a lack of involvement of national parliaments in the EU, according to Balkenende<sup>1</sup>. National parliaments needed to get more influence than given in the TECE if the Netherlands were to ratify a revised Treaty. Having accomplished this self-proclaimed mission, Balkenende declared victory. He did not fail to point out the symbolic gesture of the new orange card procedure included in the EWM that carries the national color of the Netherlands. In fact, I uphold that it was not a coincidence that this new feature was called an 'orange card' but that, in fact, European leaders granted Balkenende this symbolic victory purposefully to persuade Dutch citizens of the quality of the Lisbon Treaty<sup>2</sup>. There is academic skepticism about the notion that a

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<sup>1</sup> It should be clearly stated that most academic observers disagree with Balkenende's diagnosis of the Dutch 'Nee' to the TECE (Aarts and van der Kolk 2005; 2006; Crum 2007; Van Grinsven et al. 2006). According to them, there were much more fundamental reasons why Dutch people voted against the TECE than the lack of involvement of national parliaments in EU decision-making.

<sup>2</sup> Certainly, the original 'yellow card' procedure as well as a rejected 'red card' procedure get their names from the mechanisms of warning and sending off players in football. An orange card, however, does not exist in football making the likelihood greater that the invention and naming of this mechanism were deliberately intended to persuade Dutch voters.

lack of involvement of national parliaments can explain the failure of the TECE. Yet, a range of academics and national parliamentarians echo Balkenende and argue that the EWM is a major step forward in solving the EU's democratic deficit (e.g. Cooper 2006).

This essay will argue that the EWM does not alleviate the democratic deficit. I share the assessment with many observers that the EU suffers from a democratic deficit and also that national parliaments have an important role to play in the EU political system. However, I do not agree that the EWM is a step in the right direction, let alone a solution. The argument presented against the EWM is three-fold. Firstly, it is argued that the EWM blurs existing channels of delegation and accountability in the EU. Instead of adding even more mechanisms for accountability such as the EWM, I believe that efforts should be made to strengthen the previously existing ones. Secondly, the EWM presents national parliaments with a possibility to perform a 'negative' constitutional check on EU legislative initiatives. That is, they have the authority to put the brakes on EU legislative initiatives and justify their actions with legal constitutional reasons. This is a function national parliaments should not perform. By steering parliamentary activity towards the EWM, resources are drawn away from parliaments' two core functions: controlling governments and connecting to citizens. Thirdly, I argue that the EWM is not effective. The Lisbon Treaty came into effect in December 2009. In the space of two and a half years, the threshold for achieving a 'yellow card' has been met only once. One could argue that it is too early to draw any conclusions about the effectiveness of the EWM or that the mere existence of the mechanism provides a pre-emptive function making the Commission present better arguments for its proposals. Yet, there are structural reasons why national parliaments rarely make use of the opportunities provided by the EWM and why some national parliaments are less inclined to use it than others. These reasons and differences persist, which makes it likely that the existence of the EWM will only rarely result in yellow or orange cards in the future. To conclude this essay, I will argue that national parliaments could make a major step towards alleviating the democratic deficit through strengthening their communicative function with citizens. The EWM, however, does not contribute to strengthening this function.

The essay is structured as follows. After this introduction, Section 2 describes the mechanism of the EWM and how this relates to the general involvement of national parliaments in the EU. Section 3 briefly sketches the problem of the democratic deficit that the EU is trying to address. Section 4 relates the EWM to the system of democratic representation in the EU where it is argued that it obfuscates, rather than strengthens representation in the EU. Section 5 delves into the functions parliaments ought to perform in a representative parliamentary system and discusses whether the EWM reinforces the performance thereof. Section 6 maps the empirical usage of the EWM to date in the context of existing knowledge of different national parliaments' roles in the EU. Finally, Section 7 presents an alternative to the EWM based on empirical research

of communication patterns in national parliaments in relation to media coverage and policy cycles. The conclusion summarizes the arguments of this essay.

## **2. The Early Warning Mechanism**

The involvement of national parliaments in the EU has been strengthened through the Lisbon Treaty. The 'Early Warning Mechanism' is the most notable instrument designed to increase this involvement. Under the mechanism, the European Commission is obliged to send draft legislative acts to national parliaments at the same time as it sends them to the Council of Ministers and the European Parliament. This means that national parliaments are no longer dependent on their own governments for information. Parliaments then have a period of eight weeks in which they can submit a reasoned opinion to the Commission to contest any proposals they feel are in breach of the principle of subsidiarity. Each parliament is assigned two votes that are split between the two chambers in case of bicameral systems. If one third or more of the total votes indicate a breach of subsidiarity through reasoned opinions, the so-called 'yellow card procedure' becomes effective. Then, the author of the draft legislative act needs to reconsider the proposal and provide renewed reasoning in the case that the proposal is sustained. Within the framework of the ordinary legislative procedure, a majority of votes by national parliaments on the breach of subsidiarity will trigger an 'orange card procedure'. In this case, the sponsor of the draft legislative act has to renew its reasoning and a simple majority in either the European Parliament or the Council of Ministers suffices to reject the proposal (European Union 2010; Schütze 2009).

Thus, the EWM reinforces the involvement of national parliaments in EU policy-making in a collective capacity. They can hinder legislation if they simultaneously object to the same proposal. Furthermore the involvement takes the form of a check on one of the core principles of federalism: subsidiarity. 'Subsidiarity' means that policy should be made at the government level closest to citizens, which can still effectively conduct such policy. Because of its explicit institutionalization of the subsidiarity principle, the EWM is hailed as a very clear constitutional principle of federal government in comparative perspective (Bermann 2008).

## **3. The Democratic Deficit**

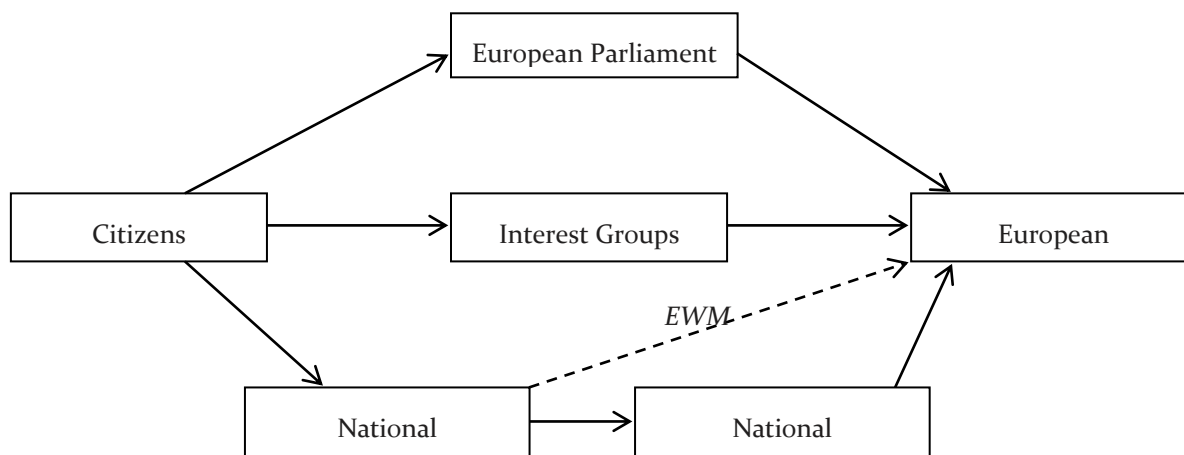
As mentioned earlier, the function of the EWM is to address a major problem in EU governance: the alleged democratic deficit. Because of its importance in many policy fields and complex supranational decision-making processes, the EU may be called a kind of 'political system' (Hix 2005) or 'polity' (Mair 2005) not unlike a nation state. Once these characteristics are acknowledged, the question of democratic standards is immediately raised (Føllesdal and Hix

2006). As the EU performs nation-state like functions, its politics must be democratic to ensure government of the people, by the people and for the people.

The need to meet basic principles of democracy is formally acknowledged in the EU as it is enshrined within the Treaties (European Union 2010). Central to the *representative model* of democracy – which is explicitly recognized in Article 10 of the TEU (European Union 2010) as core principle of the EU and also most relevant to the role of national parliaments – is an understanding of democracy as a chain of delegation and accountability between citizens and their representatives. Citizens delegate the task of governing to politicians through elections. Politicians in parliament then in turn delegate to governments who in turn delegate to ministries and agencies to ensure that the interests of citizens are adequately represented. Those with delegated tasks regularly report back in which they account for their actions.

This pattern of delegation and accountability is a well-known feature of representative democracy in Western Europe and beyond. Yet, its functioning is not a given. For this system to work, there must be effective mechanisms in place to make sure that the ‘agents’ to whom ‘principals’ delegate act in the best interest of those principals (McCubbins et al. 1987). This includes mechanisms like parliament’s vote of no confidence in government or periodical elections in which citizens can ‘throw the rascals out’ (Strøm et al. 2003).

In the EU, national parliaments can be located in one of three channels of delegation and accountability. This is the so-called ‘national channel’ or representation, which runs through national elections, national parliaments, national governments and the Council of Ministers to the European Commission. Two other channels of delegation and accountability exist through the direct elections of the European Parliament and through informal membership of interest groups and NGO’s that lobby in Brussels (Norris 1997). Figure 1 graphically displays these three channels of representation. The arrows indicate the direction of delegation.

**Figure 1: Three Channels of Representation in the EU**

Source: Norris 1997, author's modification

The role of national parliaments in the national channel has been frequently problematized (Barrett 2008; Kiiver 2006; Raunio and Hix 2001; Tans et al. 2007). Because they have less information than their governments and less administrative capacity, it is hard for national parliaments to make sure governments act in accordance with the will of the majority of parliamentarians (Holzhacker 2002). To improve control over government actions in Brussels, parliaments have created a range of mechanisms and institutions that include regular plenary debates and specialized European Affairs Committees (Maurer and Wessels 2001; Norton 1996). Clearly, these mechanisms are intended to either increase the control national parliaments have over their own government's actions in EU decision-making or to improve the visibility of parliament's involvement to citizens so that they can use their votes in the next elections to shape national policy in the EU. The possible contribution of the EWM should be evaluated in this light: does it contribute to control of national parliaments over their governments and/or accountability of national parliaments to citizens? More generally: does it further enhance the EU's representative system as characterized by these three channels of delegation and accountability? To the extent that the EWM makes a positive contribution to these channels, it can be said to contribute to alleviating the democratic deficit.

## 4. Obfuscating Channels of Delegation and Accountability

The EWM presents a challenge to the simplicity of the model of representative democracy in the EU based on three channels mentioned in chapter 3, because it directly connects the national parliaments to the European Commission. This means it not only bypasses the national governments and Council of Ministers in the national channel of representation but also adds in addition to the European Parliament another directly elected parliamentary body to EU decision-making. To justify this change in the situation, the proponents of the EWM need to present good arguments as to why this new mechanism of delegation and accountability adds to the quality of democracy in the EU in relation to the previously existing mechanisms (Morgan 2005). In my opinion, they have so far failed to do so.

An initial argument in favor of the EWM may simply be that more mechanisms of delegation and accountability are always a good thing. Each mechanism constitutes cumulative ways of bringing Europe closer to its citizens. But it is easy to imagine how an intricate web of representation mechanisms obscures responsibility rather than increases representation. Increasing the amount of actors involved in controlling the European Commission does not necessarily make it follow the demands of citizens more closely. We need to ask ourselves very critically whether mechanisms of representation ‘collide’ or ‘cohere’ (Lord and Pollak 2010). One argument against the EWM is that the European Parliament has the task of parliamentary oversight at EU level, not national parliaments. This is an argument heard especially from the European Parliament, rather unsurprisingly. It is not a very strong argument because there are national consequences of EU legislation and citizens still orientate primarily to national level politics with their demands for democratic representation. So, there is sufficient cause for the institutions in the national channel of representation to be strongly engaged in EU policy formulation. However, in the discussion about the EWM, there have so far been no convincing arguments why it would be a good thing for national parliaments to bypass their own governments in EU decision-making (Fraga 2005). Crucially, we have to ask ourselves what the role of national governments in the Council of Ministers is when national parliaments directly relate to the Commission. If a national parliament does not file a reasoned opinion within the eight week period of the EWM – thus basically giving its fiat to the legislative proposal – how much negotiating power does its government have left in the matter? Other governments, the Commission and the European Parliament might conclude that there is no objection from this particular member state to the legislative proposal in question. This interpretation very much depends on whether the EWM is considered a strictly legal check of subsidiarity, or whether subsidiarity is understood in more political terms where objection signifies political disagreement. Cooper (2012) upholds that the subsidiarity principle is frequently interpreted in political terms as furthering both legislative and deliberative functions of national parliaments, rather than legal terms. But he does not underline that the more



frequently subsidiarity is used by national parliaments in political terms, the more a lack of action on the part of national parliaments signifies political agreement with the legislative initiative. Such effects of the EWM on EU negotiations need to be studied empirically so that the doubts I raised above can be systematically refuted, before statements can be made that the EWM makes a positive contribution to democracy in the EU.

I will now continue to focus on the connection between national governments and parliaments. National governments of EU member states rest on support by a majority in parliament. This is a feature of the parliamentary democracy model that most EU member states have. In practice, this model often means that the government has considerable influence over parliament because a parliamentary majority against the government would be a major embarrassment for the government and the coalition parties supporting it (Burns 1999). Governments frequently cajole their backbenchers into supporting them using the possible loss of a parliamentary majority as a threat. Given such a situation, it seems unlikely that parliament will send a reasoned opinion to the Commission without the consent of its government. If the government foresees problems with the legislative proposal, what then does a parliamentary reasoned opinion add to a critical voice or 'no' vote by the government in the Council of Ministers? Rather than engaging in the activities made possible by the EWM, it makes more sense for national parliaments to strengthen the oversight of their own government's actions in EU decision-making and then let the government represent the parliamentary majority in Brussels.

While the benefits in terms of representation are dubious, the costs are much clearer. The EWM presents clear opportunity costs in terms of time and manpower that the Commission and the national parliaments now spend on reasoned opinions which cannot be spent on other activities. The EWM distracts from the scarce parliamentary resources that could have been devoted to either controlling the actions of the respective national governments in Brussels, or to accounting to citizens for adopted EU legislation. In my opinion, adding another delegation and accountability mechanism thus distracts from the ones previously existing. As discussed above, there is ample reason to be worried about the adequate functioning of the delegation and accountability mechanisms between citizens and their national parliaments on the one hand and between national parliaments and their governments on the other hand. These are the mechanisms that require additional attention and resources which are now spent on the EWM.

In short, the first argument why the EWM does not alleviate the democratic deficit is that it obfuscates representative democracy in the EU. Adding another mechanism of delegation and accountability raises questions about the importance of other mechanisms and thus about responsibility in EU legislation. If existing mechanisms were operating at peak effectiveness, an argument could be made for improving democratic quality by adding new mechanisms. However,

there are strong reasons to believe that neither the control of national parliaments over their governments nor parliaments' communication to citizens are functioning optimally (Raunio 2009). Instead of spending resources on the EWM, resources should therefore be directed towards strengthening previously existing mechanisms in the EU's three channels of representation.

## 5. Relegation to Subsidiarity Watchdogs

What exactly are parliaments supposed to do? Taking the nature of the democratic deficit and the position of national parliaments into account, we need to answer this question before being able to evaluate whether the EWM positively reinforces these functions. The question of parliamentary functions has been addressed in many ways. Some come up with over twenty different tasks parliaments are supposed to perform, which generally fall into two broad categories: duties towards governments and duties towards citizens (Müller et al. 2003: 23; Raunio 2011).

Firstly, parliaments have a duty to control government. They should make sure the government acts in accordance with the will of the majority in parliament. To this end, parliaments have created a range of control mechanisms such as committee meetings or plenary sessions. In performing this function with regards to EU legislation, national parliaments have invested heavily in creating European Affairs Committees (EACs) (Maurer and Wessels 2001). For a long time, the model followed here was that of the Danish *Folketing*, whose EAC is able to bind ministers to negotiation mandates before they head off to Brussels. This model has been copied to some extent by other Member States, especially by some Member States that joined the EU after 1973, such as Austria, Finland and Slovenia (O'Brennan and Raunio 2007). The EACs are supposed to correct or mitigate some of the major disadvantages national parliaments endure vis-à-vis their own governments in EU policy making. In particular, national parliaments suffer from a lack of resources in the form of manpower, time and information to control their own governments. By appointing a specialized committee in charge of controlling government's EU policies, these disadvantages are reduced. However, too much control has shown to be detrimental at times, when for example the room for maneuver governments enjoyed in EU negotiations was too restricted. The challenge of safeguarding this duty of parliamentary control over government action in EU negotiations is clearly what has drawn most attention and energy from both national parliaments themselves and the academic community when engaged in improving the role of national parliaments in the EU (Auel 2007; Raunio 2009).

Secondly, parliaments need to perform a communicative-democratic function towards citizens. The importance of this function can be described in two ways. For those who emphasize the importance of competitive elections as the corner stone of representative democracy, the most

important communicative function of national parliaments is to offer voters a meaningful choice. Political parties represented in parliament need to clearly communicate their political preferences to voters so that they can make an informed decision at the next election. That way, adequate representation of interests is established. In contrast, those entertaining a more collectivist understanding of democracy emphasize the need for collective will-formation in national parliaments. From this point of view, parliaments are the primary deliberative forums in modern democracies where alternative interpretations of the public good are articulated, challenged and defended until the ultimate collective will is formed. Common to both understandings of democracy is an emphasis on the educational role of parliaments. Politicians need to inform citizens about the relevant issues, what is at stake and what the trade-offs are. Whichever understanding of democracy one has, it requires a public communicative role of national parliaments. The dominant focus by parliaments themselves on performing their first function of government control has been detrimental to their performance of this second, communicative, function (Auel 2007; Auel and Raunio 2012; Raunio 2009). The Danish model revolved around committee meetings behind closed doors where government negotiating strategies were drafted. Secrecy was a requirement for this mandating to function well in order not to give away the Danish negotiation strategy or embarrass government if it did not manage to achieve its aims. The influence of the EAC in the Danish model on government action in Brussels thus came at the direct price of open communication with citizens. Only since 2006 has the Danish Folketing opened up its EAC meetings to the broader public (Møller Sousa 2008). In light of growing Euroscepticism and a clear gap between citizens and elites when it comes to preferences about European integration throughout the EU, it now seems clear that the communicative function of national parliaments has been neglected for far too long and deserves much more attention (Auel 2007; Raunio 2009).

The type of national parliament activities stimulated by the EWM supports neither the control function of national parliaments nor the communicative function. There is a lot of uncertainty about what exactly subsidiarity means. Many consider it a legal check where national parliaments judge whether the EU has the legal competency to engage in legislation of a certain issue area (Kiiver 2012). This, however, is a constitutional function that should not be performed by national parliaments. If there is indeed a need to perform such constitutionality checks, it should be done by the European Court of Justice or by national constitutional courts or councils, either individually or collectively (e.g. Bermann 2008). To others, subsidiarity is a more political concept (e.g. Cooper 2012). It concerns questions of governance efficiency and effectiveness and the right level of policy-making. Clearly, it makes more sense to involve parliaments in such questions. Still, questions of efficiency and effectiveness distract from fundamental political choices of distribution or redistribution that should dominate parliamentary activity. In other words, parliaments should not prioritize how best to implement a certain policy, they should prioritize

whether this policy ought to be implemented in the first place. Furthermore, the subsidiarity principle takes government action as given. The question is only at which level government intervention ought to take place. The option that the government should step back and refrain from intervention in a particular societal or economic situation is not as clearly laid on the table as it should be<sup>3</sup>. According to Ian Cooper (2006), the EWM turns national parliaments into ‘subsidiarity watchdogs’. While he welcomes this development, I argue that national parliaments should not be relegated to subsidiarity watchdogs since this does not strengthen either one of the two core functions parliaments are supposed to perform.

## 6. It Does Not Work in Practice

A third criterion to assess the functioning of the EWM is its effectiveness. Yet again, I am rather skeptical, although it needs to be pointed out that the Lisbon Treaty has simply not been in effect long enough to provide a definitive answer. At the time of writing, the EWM had only existed for two full calendar years. Since the data made available by the Commission about reasoned opinions submitted by national parliaments is provided regarding full calendar years, it is this amount of time that the evaluation is largely based on. However, there are signs that the activities of national parliaments in the EWM are increasing as indicated by the increased number of reasoned opinions sent to the Commission in 2011 in comparison to 2010.

In July 2012, the first ‘yellow card’ was drawn on the so-called “Monti-II Regulation” regarding the liberalization of services. It remains to be seen how the Commission responds. Two and a half years after the entry into force of the Lisbon Treaty, there has not been a case of an orange card. The sobering conclusion must be that there has hardly been any measureable impact to date. Still, it would be too simple to discard the mechanism on these grounds. First, it may be that national parliaments need time to get used to the EWM, gain experience and know-how about when and how to write reasoned opinions. National parliaments also need to establish the proper procedures internally and in relation to other chambers or parliaments of other Member States etc. Thus, we could simply be facing a time-lag. The yellow card on the Monti-II Directive may signal to national parliaments that the threshold can realistically be met, which then is taken as encouragement to file reasoned opinions in the future. The data provided by the Commission who keeps track of all reasoned opinions would certainly subscribe to an interpretation that

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<sup>3</sup> I thank Joseph Weiler for pointing this out.

parliaments need some time to start using the EWM effectively. Votes towards breaches of subsidiarity per country per year are presented in Table 1<sup>4</sup>.

**Table 1: Votes on Subsidiarity Breaches per Member State per Year**

Country	2010	2011	Country	2010	2011
Austria	3	1	Latvia	0	0
Belgium	0	2	Lithuania	4	0
Bulgaria	0	4	Luxembourg	6	14
Cyprus	0	2	Malta	0	4
Czech Republic	2	0	Poland	6	8
Denmark	4	2	Portugal	0	2
Estonia	0	0	Romania	0	4
Finland	0	2	Slovakia	0	4
France	3	2	Slovenia	0	0
Germany	2	2	Spain	0	2

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<sup>4</sup> The two votes are split between both chambers in case of bicameral systems or held by the single chamber of parliament in case of unicameral systems. This means that in Member States with unicameral systems like Sweden and Luxembourg, each reasoned opinion counts as two votes. Some Member States with a bicameral system, such as the Netherlands, have started sending joint reasoned opinions on behalf of both chambers. In other bicameral systems, chambers operate independently.

<b>Greece</b>	0	0	<b>Sweden</b>	6	16
<b>Hungary</b>	0	0	<b>The Netherlands</b>	4	5
<b>Ireland</b>	0	2	<b>United Kingdom</b>	5	1
<b>Italy</b>	1	3	<b>Total</b>	<b>46</b>	<b>82</b>

Source: European Commission, author's compilation

Clearly, Table 1 documents an increase in the amount of reasoned opinions parliaments have sent to the Commission. Furthermore, more national parliaments have made use of this possibility in 2011 than in 2010. The fact that 2012 featured the first time the threshold for a yellow card was reached, leads us to believe this upward trend of activity will continue.

In the end, it is not a sufficient evaluation of the EWM to look at how often a particular Member State has sent reasoned opinions to the Commission. Even an average across Member States will not tell us much, because parliaments can only operate as a collective in this mechanism. The core criterion for assessing the effectiveness of the EWM is not the amount and quality of reasoned opinions sent to the Commission, but the amount and quality of yellow and orange cards 'drawn'. Only this will put into effect the mechanism and force the Commission to reconsider its legislative proposals.

Yet, what Table 1 also clearly shows are strong differences in activity between Member States. This fits with observations elsewhere about comparative parliamentary involvement in EU affairs (Bergman 1997; Kiiver 2006; Maurer and Wessels 2001; Norton 1996; O'Brennan and Raunio 2007). The difference in activity may be considered a problem for democracy at the national level only of those Member States where national parliaments do not demonstrate activity when this activity – or lack thereof – does not affect other Member States. In the case of the EWM, however, the effectiveness of active parliaments is clearly hindered by the inactivity of others as this inactivity greatly reduces the chances of meeting the required thresholds for yellow and orange cards. Assuming one would welcome the effective functioning of the EWM, the democratic deficit in some Member States in the form of a lack of parliamentary involvement in EU affairs aggravates the democratic deficit in others.

Despite the fact that the thresholds of yellow and orange card procedures have been rarely met, one could still evaluate the effectiveness of the EWM positively based on its possible pre-emptive qualities<sup>5</sup>. That is, one can argue that the mere existence of the EWM already forces the Commission to provide solid arguments for its legislative initiatives. In this light, the lack of reasoned opinions may actually be an indicator of the mechanism functioning very well as the Commission apparently presents well-justified proposals in relation to the principle of subsidiarity. However, in light of the strong differences in complaints on subsidiarity grounds across EU member states, it is questionable to assume that parliamentary inactivity is a direct consequence of well-justified Commission proposals.

## 7. The Alternative: Public Political Engagement

If the EWM is not a contribution to democracy in the EU in light of the three reasons above, the question is whether another mechanism or institutional arrangement is more desirable. As earlier identified in the analysis of chains of delegation and accountability in the EU, national parliaments ought to perform the dual roles of controlling government and communicating to citizens. There has been much attention given to increasing the control function, particularly through the creation and strengthening of EACs. Very little attention has been given to the communicative role of national parliaments (Auel 2007; Raunio 2009).

The EWM certainly does not contribute to a strengthening of national parliaments' communicative role if it only works passively. If parliamentary activity is to reach citizens, it needs to attract media attention. This is because few citizens directly follow parliamentary debates or other parliamentary activities. Yet, mass media operate according to news value criteria in their assessment what to report on and one of the main criteria is that there must be a certain event or irregular occurrence to trigger a media story (Altheide 2004). Therefore, one can only imagine the mass media reporting on the EWM, national parliaments' involvement in EU affairs and the relevance and meaning of subsidiarity if a yellow or orange card is actually drawn. Such an 'event' might draw the media's attention and, through media coverage, reach a larger audience. Without it, it seems likely that the EWM and subsidiarity will receive very little media coverage and that the majority of citizens will not be aware of its contribution to democratic governance in the EU.

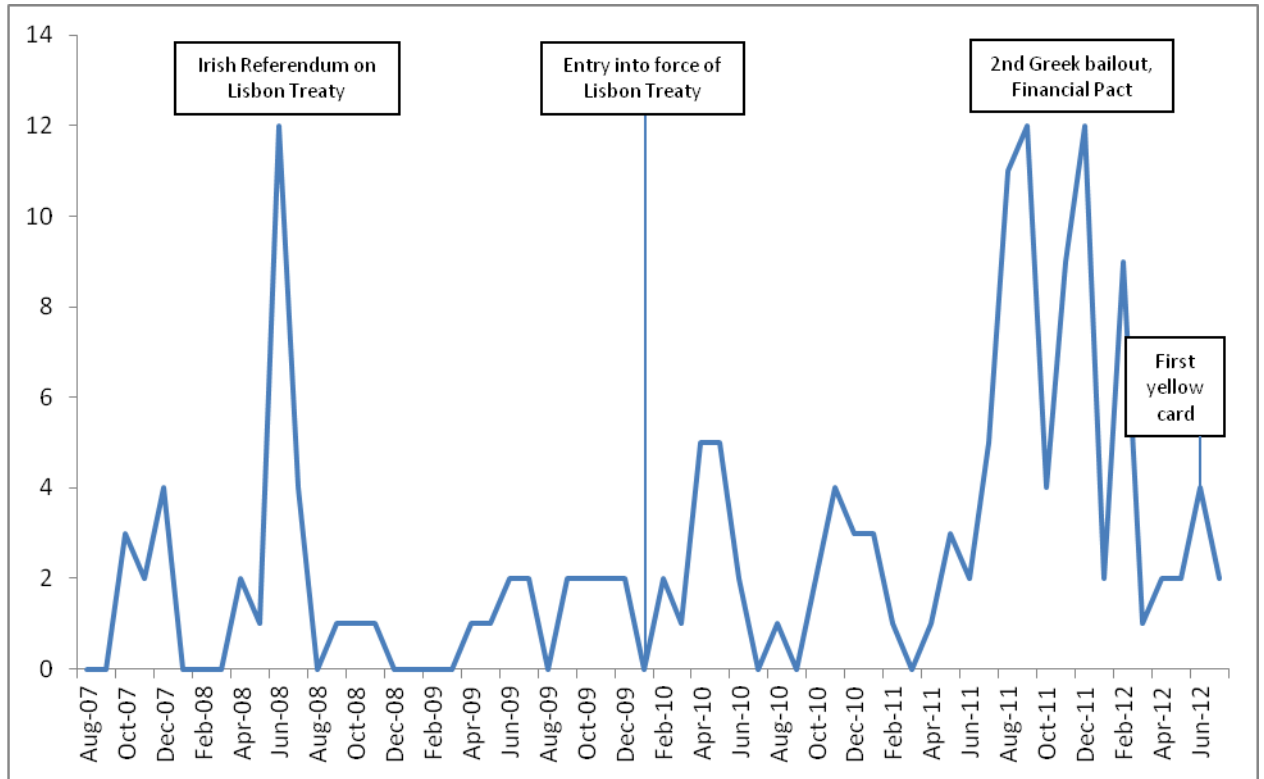
Yet, the only yellow card so far hardly made such an impact. Figure 2 displays the number of articles appearing in the *Financial Times* that mention both 'national parliament(s)' and 'EU or

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<sup>5</sup> I thank Philipp Kiiver for providing this argument.

European Union’ in a period containing an equal time frame before and after then entry into force of the Lisbon Treaty. The *Financial Times* can be considered one of the most attentive newspapers to EU affairs, meaning that we can expect any media attention to national parliaments in the EU to be reflected in its coverage.

**Figure 2: Articles in the Financial Times on national parliaments in the EU**



Source: LexisNexis

Figure 2 hardly supports the notion that the existence of the EWM generates more media attention for national parliaments’ role in the EU. Even the first yellow card in June 2012 only drew medium level attention. What really draws media attention for the involvement of national parliaments in EU affairs are the major events of Treaty ratification and the Euro crisis as indicated in June 2008 and late 2011 to early 2012. In these cases, the ratification of Treaties or bailouts by national parliaments is what attracted media coverage.

How can we increase the communicative function of national parliaments? The challenge is to increase the public visibility of national parliaments’ involvement in EU affairs. That way, citizens will know what each of the political parties represented in parliament stands for and does in EU decision-making. They will also be more informed regarding what is happening within the EU, how this is relevant for them and what kind of values, interests and policy aims are at stake. Plenary



parliamentary debates tend to contain a mix of both substantial issues on preferences regarding European integration as well as issues of national policy and national government behavior (Wendler 2011). Coverage of EU issues in mass media can both communicate parliamentary activity to citizens and stimulate further parliamentary activity by providing parliamentarians with a platform and an incentive to reach out to voters (De Wilde 2011b). Furthermore, plenary debates organized around key EU events such as European Council summits can greatly improve the communicative role of national parliaments by timing activity to moments in EU decision-making that generally receive a lot of media attention (De Wilde 2011a). Figure 2 also illustrates the importance of such events for achieving media coverage. Rather than focusing on the EWM, emphasis should be directed towards supporting public involvement of national parliaments surrounding key events in EU decision-making and benchmarking among national parliaments to exchange best practice regarding the institutions and procedures that support such involvement. The success of such a communication strategy depends on two factors. On the one hand, parliaments' communicative efforts need to be linked to media cycles because political communication between representatives and citizens is highly dependent on media coverage. On the other hand, parliamentary activity needs to be linked to the right phases in EU policy formulation. The right moment of involvement is when legislative procedure has progressed enough that the major political issues at stake are clear, yet not so far that all the important decisions have already been made (De Wilde 2011a). At this stage, parliaments may be able to draw media attention at a time when arguments about substantial policy choices are meaningful.

## 8. Conclusion

This essay has presented three arguments to explain why the Early Warning Mechanism created by the Lisbon Treaty as an attempt to increase the involvement of national parliaments in EU affairs, does not help to alleviate the EU's democratic deficit. Firstly, it obfuscates representative democracy in the EU as it generates uncertainty about the roles and responsibilities of various institutions in the three channels of delegation and accountability that make up representative democracy in the EU. The roles and responsibilities of national governments and the European parliament especially are made less clear. Secondly, it strengthens the wrong kind of involvement of national parliaments. Parliaments should control their national government and they should communicate with citizens. Those are their main tasks. Constitutional checks which come about through the EWM, should be left to the judiciary and not the national parliaments. The communicative function especially requires much more attention and resources than received to date. In the current arrangement, the EWM causes opportunity costs in terms of time, money and manpower spent by national parliaments writing reasoned opinions that could have been spent on communicating with citizens. Thirdly, even assuming one would normatively support the EWM, the preliminary conclusion after two years of Lisbon must be that it does not function effectively. So far, the threshold for reaching a yellow or orange card procedure has only been met once. Still, it is too early to say whether this is the prelude to many more yellow and orange cards to follow in the future or if it is simply a one off occurrence. Even if more yellow cards were to follow, the history to date of reasoned opinions submitted by national parliaments to the European commission directs our attention to the differences in activity of national parliaments across Member States. Some national parliaments simply do not appear to be interested in becoming involved in EU matters. Since their lack of participation reduces the chances of effectiveness for other national parliaments, there is a clear problem of interdependence.

To be fair, it would be unrealistic to hope or to assume that the EWM will solve the EU's democracy problems, as was suggested by former Dutch Prime Minister Balkenende after signing the Lisbon Treaty. This mechanism, which is limited in many ways, cannot reasonably be expected to solve such a large problem. A second nuanced remark is that it has to be taken into consideration that the time to evaluate the EWM has been very short. After all, the EWM has been in operation for two full years, which does not provide sufficient grounds to conclude whether it works or not. There are signs of increased parliamentary activity over time. Should the thresholds for yellow and orange cards be met more often in the future, my third argument would be refuted. That however, would still leave the first two arguments valid. Though we cannot expect the EWM to solve the democratic deficit in the EU, we can ask whether it provides a possible contribution towards a solution. For the reasons given above, I conclude that it does not.

## **Acknowledgements**

This essay is an extended version of a presentation with the same title at the conference 'Parliaments in the European Union after Lisbon' in Maastricht, February 2012. It has benefited tremendously from discussions with members of the audience there and with Katrin Auel, Thomas Christiansen, Ian Cooper, Phillipp Kiiver, Tapio Raunio and Joseph Weiler. Many thanks to all of them for these valuable engagements. I would also like to thank the researchers, editors and reviewer at OPAL (Observatory of Parliaments after the Lisbon Treaty) for the invitation to Maastricht and for comments and support on this essay.

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