

**CHARLES UNIVERSITY**  
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Institute of Political Studies

Department of International Relations

**The Early Warning Mechanism:  
political or legal procedure?**

Master's Thesis

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Year of the defense: 2024

## **Declaration**

1. I hereby declare that I have compiled this thesis using the listed literature and resources only.
2. I hereby declare that my thesis has not been used to gain any other academic title.
3. I fully agree to my work being used for study and scientific purposes.

In Prague on December 29<sup>th</sup>, 2023.

Leona Knežević

## References

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## **Abstract**

Subsidiarity and the Early Warning Mechanism (EWM) are two concepts whose nature is heavily debated in the academic literature. Subsidiarity is a principle enshrined in the Treaties of the European Union that serves as a guideline for the proper distribution of powers between the EU institutions and its Member States. It is defined in the Treaty of the European Union which also provides national parliaments of the Member States with a way to ensure that the principle of subsidiarity is respected by the EU. They provide their opinions to participate in the mechanism of scrutiny and the opinions serve as reviews of legislative proposals if Member States believe that the decisions should be taken at the national level. This is considered as both a legal and a political act. To determine whether the nature of the Early Warning Mechanism is legal or political, a qualitative content analysis was carried out on the opinions of Romania, Croatia, Denmark, and Sweden, which were subject to parliamentary scrutiny from 2013 to 2022. The nature of their content was also assessed and several important factors contributing to the choice of their arguments were found. Complementing the existing research, this thesis provides additional insights into the reasons aforementioned national parliaments used in their opinions, which include both reasoned opinions and Political Dialogues, especially the more recent ones that are not well evaluated. In addition, the thesis will provide further insights into less-researched reasoned opinions and Political Dialogues of Romania and Croatia, especially Croatia, whose opinions have not yet been fully analyzed. The analysis of the reasoned opinions can also contribute to future research by providing a window into the four states' views on the EWM and highlighting similarities in its use in the Western/older and Eastern/newer EU Member States.

## **Keywords**

European Union, national parliaments, subsidiarity, proportionality, Early Warning Mechanism, reasoned opinion, Political Dialogue, Romania, Croatia, Denmark, Sweden

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## 1. Introduction

Subsidiarity has a long tradition in political thought. It essentially states that a central authority should only perform tasks that cannot be done at the local level. In the European context, it is known as the principle of subsidiarity and is considered one of the most important principles on which the European Union (EU) is based, as well as one of the core principles of European Law. It was first mentioned in the Treaty of Rome in 1992 but was codified as a fundamental principle of the EU only in 2007 in Article 5 of the Treaty of Lisbon. Its main objective is to ensure that decisions are taken as close as possible to the citizens and that there is a constant review of whether action at the EU level is justified. Subsidiarity, as defined in Article 5 (3) of the Treaty of the European Union (TEU), provides a legal basis for national parliaments to take a draft of a legislation made by the European Commission and submit it to a subsidiarity check. In addition, Protocol 2 sets out guidelines for national parliaments to monitor the EU's compliance with subsidiarity. The Protocol "repeats the obligations for draft legislative acts set already in the Amsterdam Protocol, namely, that before proposing legislation the Commission should conduct wide consultations". (Granat, 2018) It refers to both subsidiarity and proportionality, but the subsidiarity control identifies only the principle of subsidiarity as relevant to the procedure. This monitoring procedure is called the Early Warning Mechanism (EWM), an institutionalized instrument that gives the ability to national parliaments to question the authority of their European legislator. It allows the parliaments to conduct a formal review procedure and issue a so-called "yellow card". National parliaments have eight weeks to submit their reasoned opinions. The opinions of national parliaments can vary in content and focus but generally serve as formal statements issued by national parliaments of the EU Member States when they believe a legislative proposal violates the principle of subsidiarity. Each national parliament has two votes. In the case of parliaments with a bicameral system, each chamber has one vote. It is important to note that neither the number of seats in a chamber or parliament nor the size of the country has any influence on the vote. If one-third – or, in the case of a proposal concerning the area of freedom, security, and justice according to Article 76 of the TEU, one-fourth – of the national parliaments raise an objection and give a reasoned opinion, the European Commission must review the proposal and decide whether it needs to be maintained, amended or withdrawn. (Kimmerle, 2013)

This is by far the most significant progress for national parliaments since the first time that their relevance was acknowledged in the Maastricht Treaty. All the Treaty revisions that addressed the idea of subsidiarity and the participation of national parliaments in the creation of EU laws culminated in the adoption of the Early Warning Mechanism. Monitoring the principle of subsidiarity thus became a way for national parliaments to ensure respect for the competencies of the Member States. In order to safeguard their national legal diversity and traditions, such a function could, in fact, make national parliaments work in a “court-like” manner and adhere to the legal concept of subsidiarity. (Kiiver, 2011) However, national legislatures cannot perform the role of impartial arbiters between the competencies of Member States and the EU. (Cooper, 2016)

Since the nature of the EWM is still unclear despite the relevant literature written on it and the study of the procedure itself, this thesis analyses the arguments used by the national parliaments of Sweden, Denmark, Romania, and Croatia used when scrutinizing the legislative proposals between 2013 and 2022. These are divided into a legal, semipolitical, and political category. The question that arises is of the nature of the arguments – political or legal – put forward in the opinions. The analysis in this thesis will provide insight into the reasons the national parliaments used in their opinions, which include both reasoned opinions and Political Dialogues, especially the most recent ones. In addition, the thesis will bring further insight into the less-researched reasoned opinions of Romania and Croatia, particularly of Croatia, whose reasoned opinions have not yet been fully analyzed. The analysis of the reasoned opinions can also contribute to future research by providing insight into how the four Member States view the EWM and highlighting any similarities in usage between Western/older and Eastern/newer EU Member States.

To address these matters, this thesis is divided into five parts. The first two parts are reserved for the introduction and the review of the literature relating to the main concepts discussed and analyzed in this thesis. The literature review serves both as a reminder of the existing knowledge about the main concepts discussed in this thesis and as a guide for formulating the coding structure of the empirical analysis conducted. It also outlines the legal and political debate surrounding the principle of subsidiarity and the EWM. The third part, the conceptual framework, deals with conceptual reflections on the substantive scope of the subsidiarity and the EWM, how they relate to national parliaments, as well as the conceptualization of legal and political classification for reasoned opinions. The fourth part deals with methods used and data collected for the empirical



analysis: how the qualitative content analysis is performed, and what kind of data was used and why. The fifth, empirical part is a descriptive quantitative analysis of both the reasoned opinions and Political Dialogues made by the EU Member States to assess whether the reasoned opinions are of a legal, semipolitical, or political nature. This final part serves to provide empirical evidence for the EWM being a political or a legal procedure and thus answer the main research question.

## **2. Literature review**

### **2.1. The subsidiarity principle and the Early Warning Mechanism**

Firstly, it is important to note that the highest bodies of the EU (the European Commission and European Parliament) provide accurate definitions and elaborate concepts that are vital for this paper (subsidiarity, EWM) and are further explained in the framework section of the proposal. The official channels provide drafts of the proposals national parliaments objected to as well as the reasoned opinions EU Member States sent to the European Commission which are a crucial part of this thesis and are being analyzed. (IPEX, 2023) Also, in order to conceptualize the political and legal framework for the assessment of the collected reasoned opinions, the literature on the nature of the subsidiarity principle needs to be examined first. The vagueness of the definition of the principle in Article 5 of the TEU left subsidiarity open to interpretations. Essentially, in the literature, it is argued that the subsidiarity principle is both legal and political. Since it has political implications, it cannot be considered strictly legal procedure, a political principle in the legislative arena. (Toth, 1994; Cooper, 2012; Cooper, 2016; Piemenova, 2016) It has also been noted that there is no widely accepted definition of what constitutes a breach of the subsidiarity principle. It is considered more of a philosophical concept than a legal one, and it remains difficult to evaluate its consequences. (Matei & Dumitru, 2020) Subsidiarity must have some objective legal norms to be measured against if it is to serve as an assessment of the EU legislature. There are general recommendations on how subsidiarity should be conceptualized and three factors that must be considered when determining whether Union action is necessary: (1) the issue that is reviewed has transnational aspects that cannot be satisfactorily regulated by the actions of the Member States, (2) actions of the Member States alone or lack of Community action would conflict with the requirements set in the Treaty or would otherwise significantly damage Member States' interests, and (3) action at Community level would produce clear benefits because of its scale or effects in

comparison with action at the Member States' level. Finally, when all three guidelines are considered together as a unit, subsidiarity can act as a check on EU harmonization. (Oberg, 2017)

Other literature puts more focus and analysis on the EWM, namely by analyzing the success of the process. There are academics who agree that the expansion of national parliaments' competencies and making them supervise EU subsidiarity was conscious and deliberate precisely because they too are political in nature, thus making the mechanism a political tool and the national parliaments a political actor. (Dashwood, 2004; Cooper, 2012) In addition, the literature noted that the EWM has served as an alert regarding challenges to be resolved by the EU, rather than a method of impeding the EU legislative process. National parliaments utilize it to voice their opinions. (Piemenova, 2016) The European Commission tasked national parliaments of the Member States to essentially perform a legal position of verifying if the legislation is legal or not. However, national parliaments are political bodies and thus cannot view the principle of subsidiarity as anything else but a political affair and use the EWM as a political mechanism. (Goldoni, 2014) The EWM is thus best understood as a form of an advisory board for the national parliaments, limiting their role to only surveillance. (Kiiver, 2011) They have effectively become a "virtual third chamber" fulfilling the legislative, representative, and deliberative functions in the EU. (Cooper, 2012) The aim is to resolve the concerns about the lack of democratic legitimacy and to bring back stronger parliamentarism into the EU while performing a legal function. But not every analysis agrees with this assessment, though. The EWM has still fallen short of expectations. Despite having some beneficial consequences like increasing interparliamentary debate, and further Europeanization of national legislatures, the EWM remained unable to secure parliamentary involvement and engagement in the development of EU policy, not fulfilling any legislative role. (Borońska-Hryniewiecka, 2017) Regarding national parliaments themselves, the way they deal with EU-related legislation provides further insides into the nature of the EWM. The literature shows that effective scrutiny by national parliaments is affected by several factors including structure, (Buskjær Christensen, 2015), the difference in control (Karlas, 2012), modes of parliamentary activity, (Auel, Rozenberg, & Tacea, 2015) in the type of their scrutiny models, strengths of their respective committees, etc. (Tacea, 2015)

Conceptually, literature differentiates between procedural and material subsidiarity. Procedural subsidiarity naturally involves several procedural conditions that the EU needs to implement for

its actions to be seen in line with the subsidiarity principle. The material dimension of subsidiarity involves the inherent in the wording of Article 5(3) TEU. These include the national insufficiency test and the comparative efficiency test which consequently serve as the subsidiarity review process into two tests. (Granat, 2018) These serve as the guidelines on how the national parliaments should scrutinize the draft legislative proposal. The first test, the national insufficiency test, examines whether the EU took actions whose objectives cannot be adequately achieved by the Member States alone. The second test, the comparative efficiency test, examines did the Union intervention achieved those objectives better in comparison to the actions of the Member States alone. The first test corresponds to the tight context of Article 5(3), while the second test is slightly broader and encompasses additional guidelines in Protocol 2. (Fabbrini, 2018) Different labels have been applied to these assessments. The elements of material subsidiarity can be thought of as "negative" and "positive" criteria. The "positive" criterion is to be examined only if the "negative" criterion is validated, requiring a comparative cost-benefit analysis at the various levels of government. The "negative" criterion focuses on the inadequacy of Member State action. According to another interpretation of Article 5(3) TEU, insufficiency of national action relates precisely to each Member State's concept of self-government and what it feels it is capable of accomplishing on its own. (Granat, 2018) Other authors also noted that the subsidiarity review can be seen in the strictest sense and can focus only on the material dimension of subsidiarity, putting the procedural dimension in a separate category that is not strictly legal. (Jaroszyński, 2020) In this sense it is also highlighted that the Member State's notion of self-government and what it feels it can do on its own are discussed in the first section of Article 5(3), which deals with the inadequacy of national action. (Chalmers, Davies, & Monti, 2010) Subsequently, there have been attempts to classify the national parliaments' reasoned opinions according to the nature of their content. There have been ones that segmented the reasoned opinions into many narrow categories. These were subsidiarity in the strict sense of the term, proportionality, conferral, justifications for a draft, legal basis, etc. (Jaroszyński, 2020) More broad ones focus on splitting the reasoned opinions on only political or legal, however, the political is always shown to be more nuanced, mostly being divided into subcategories as well. Rather than having only two categorizations, legal and political, three can be conceived: one legal and two political, each entailing a different interpretation of the subsidiarity principle, one broader than the other. (Cooper, 2016)

Furthermore, to better answer the research question it is important to determine what is known about the contents of the reasoned opinions. So far, research has shown that reasoned opinions rely on diverse sets of reasons, sometimes only slightly connected to the meaning of the subsidiarity principle under Article 5(3) TEU. Although the opinions did address subsidiarity in the strictest legal sense, many opinions still asked whether the EU actions provided greater benefits than any action made at the member state level. (Jaroszyński, 2020) The legal foundation of the subsidiarity principle was frequently deemed incorrect by national parliaments, but they include the correctness of the legal basis for proposals, whether they adhere to the proportionality principle, and how well they really work. (Pimenova, 2016) Some authors believe that the principle of proportionality in Article 5(3) is not framed as nor was it ever meant to be interpreted as a lone, competence-based proportionality analysis. There was also no suggestion of such use of proportionality in the discussion that led to the Lisbon Treaty. (Gustaferro, 2014) More often than not, reasoned opinions were found to examine the merit of a proposal, its adherence to basic rights, the selection of a legislative format, and the legitimacy of the delegations to adopt a delegated or implementing act. They also discuss the necessity for EU action in general and the lack of justification for EU action as well as procedural breaches. (Kiiver, 2012) Some of the reasoned opinions assume that certain proposed laws go beyond their stated purpose or, in actuality, seek a different objective from what is specified in the proposals' legal justification. Also, the reasoned opinions can contain provisions seeking to amend or supplement the proposed draft to their benefit. In addition, many of the reasoned opinions failed to demonstrate a violation of the subsidiarity principle in the strictest legal sense. Instead, they focused on the content of the legislative proposal and had concerns clearly driven by their domestic politics. (Blockmans et al., 2014)

## **2.2. Actions of national parliaments: Romania, Croatia, Denmark, Sweden**

It is important to examine the national parliaments of the Member States, primarily what their roles are and how the parliaments affect Member States' understanding of the scrutiny process. As per Article 3 of the TEU, all national parliaments in the EU have the right to participate in the EWM by submitting reasoned opinions to the European Commission on matters that they believe infringe on the subsidiarity principle. (Gattermann & Heffler, 2013) Academic literature has identified a large number of functions that national parliaments perform but most agree on four fundamental roles: (1) electing the government, (2) legislation which includes both the creation of policy and providing final approval for choices that are made collaboratively, (3) oversight which

contains scrutiny and control, and (4) communication. However, not all these functions are equally important in terms of EU affairs. In terms of formulating policies and providing final approval, national parliaments have transferred some of their legislative authority to the European level. They have created provisions to examine and affect their government's EU policies to make up for this loss of legislative authority. Additionally, national parliaments now have the chance to actively affect policymaking at the EU level through the political dialogue and the EWM, albeit with few possibilities. Therefore, scrutiny is typically seen as the most crucial role parliaments have while dealing with EU-related issues. An important function that remains is communication by making the EU more present in national politics and more accessible to and for their citizens. Submitting opinions also allows national parliaments to exert a certain amount of political influence on the decision-making process within the EU. This new function helps national parliaments express their perspective and contribute to shaping the outcome of a legislative proposal. (Auel, Rozenberg, & Tacea, 2016)

The other important difference between national parliaments and the way they use the EWM is in the number of opinions parliaments send to the European Commission. Romania is in the upper echelon of countries with a high number of opinions submitted for parliamentary scrutiny, along with Portugal, Spain, and the Czech Republic. Sweden, on the other hand, is in the lower echelon of the countries with a high number of opinions together with France, Germany, and Italy. Both countries have also given their opinions consistently every year, from 2010 and 2008 respectively. Denmark and Croatia, on the other hand, have a smaller number of opinions and haven't given them consistently every year. (Huysmans, van den Brink, & van Gruisen, 2023) Although there is sufficient research made on Denmark and Sweden as Western European countries (Laursen, 2005; Christensen, 2015; Hegeland, 2015; Jonsson Cornell, 2016; Auel, 2018), they are needed to represent a variety of EU Member States and as a contrast to the two Eastern European countries. Denmark was also chosen because of its prominent role in the EWM, investing more resources in its participation at the EU level (Borońska-Hryniewiecka, 2017), and its success in coordinating other national parliaments and triggering the first yellow card. (Auel & Neuhold, 2017) Denmark and Sweden are more developed countries with longer democratic histories. Romania and Croatia are both ex-communist countries that are still working on their development. More importantly, alongside Bulgaria, they were the last countries to enter the EU.

(Tanasoiu, 2010) The two countries are relatively new members and thus the research done on their reasoned opinions is scarce, especially for Croatia as the newest addition to the EU.

In the reviewed literature, one of the main reasons for the disparity in the number of reasoned opinions is the degree of influence chambers have on EU affairs, i.e., the greater the influence of the chamber, the higher the number of opinions submitted in a year. (Perkowski & Jakub, 2019) The strength of the parliament is also considered influential in the frequency of submitting opinions. According to several authors, strong parliaments tend to be more engaged on EU issues since they have created stricter oversight rules on EU concerns. However, some research has also shown that strong parliaments are not always necessarily among the most active parliaments. (Auel, Rozenberg, & Tacea, 2016; Briški & Špiljak, 2014; Karlas, 2012) National parliaments have a greater possibility of influencing the content of EU proposals the longer they have the time to do so. For example, the Danish Parliament submitted its negotiating position to the European Affairs Committee too late and lost the chance to influence EU law. Additionally, the Swedish parliament has submitted more opinions than the Commission received, all due to missing the deadline. (Jonsson Cornell, 2016) Another influence comes in the form of national parliament committees that primarily deal with the process of scrutiny. For instance, the first accession countries, Denmark, the United Kingdom, and Ireland, because of their traditionally strong parliaments, almost immediately established their European Affairs Committee (EAC) with the task of scrutinizing European affairs. Nowadays, national parliaments of all Member States have their own European affairs committee and a system to scrutinize European documents and policies. (Jans & Piedrafita, 2009) However, the status and role of the EAC does vary across the Member States. In terms of recognition and efficacy, the best-known committee is probably the Danish European Affairs Committee. (Bergman, 1997) Also, if a sectoral committee has more influence on the forming of a reasoned opinion as opposed to the EAC, parliamentary bodies, or the administration, the odds of actually submitting a reasoned opinion on a draft legislative act are significantly higher. (Gattermann & Heffler, 2015)

### **3. Framework and Concepts**

#### **3.1. Research target**

Subsidiarity is considered a political principle that is interpreted and applied by the EU institutions. However, it is equally one of the fundamental principles of the EU law, that needs to be interpreted considering its content and its objective. But first and foremost, subsidiarity should be interpreted and applied in a way that is effective in practice: in the form of the EWM. Thus, the main research question in this thesis is: *Whether the EWM, as a subsidiarity mechanism, is a political or a legal procedure?*

In order to find the answer to the main question, this thesis sets out to first briefly outline the debate between legal and political which surrounds the subsidiarity principle and the EWM. An empirical analysis of the reasoned opinions and Political Dialogues of the EU Member States Croatia, Romania, Denmark, and Sweden is conducted. Political Dialogues are also analyzed to contrast them to the reasoned opinions, and since they provide additional information on the way national parliaments frame their concerns to the European Commission. Subsequently, a question about the nature of the arguments – political or legal – presented in the reasoned opinions arises and needs to be addressed. The thesis also looks at the national parliaments themselves; their structures, their attitudes towards the EU and the EWM, and the way they issue their opinions. It considers the ways in which national parliaments perform parliamentary scrutiny in order to find how they approach the issue of utilizing the EWM. In other words, to carry out their scrutiny role effectively, national parliaments must carefully select the arguments they will present to the European Commission. The analysis in this thesis aims to support finding *how national parliaments form the basis for the arguments they present in the opinions* and uncover *what factors contribute to their choice of argumentation*.

#### **3.2. Conceptual framework and key concepts**

The meaning of EWM has always been quite vague and remains contentious. The perceived vagueness of EWM stems from the concept around which it revolves - subsidiarity. In its most basic form, subsidiarity is a principle which states that the central authority should only perform tasks that cannot be done at the local level. According to the principle, action will be taken at the EU level only if it is more effective than action taken by the Member States alone, and it applies only to areas of shared competence between the EU and the Member States. In essence, it regulates

the exercise of the EU's non-exclusive powers, so that it can only intervene when the Member States are unable to achieve the proposed objectives or when the EU can provide added value if the issue is dealt with on the EU level. (European Commission, 2023a) In other words, the European Commission must demonstrate that EU action is necessary, relevant, and provides added value over action at the national, regional, or local level. In order to assess the nature of the EWM as a subsidiarity mechanism, the procedure needs to be clearly defined. The EWM is a monitoring system for national parliaments, which can raise concerns if they believe that the principle of subsidiarity is being violated. It gives each national parliament or chamber the right to send an opinion on a draft legislative act to the Presidents of the European Parliament, the Council, and the Commission. A national parliament or chamber must explain why the draft legislative act is not compatible with the subsidiarity principle. This opinion is referred to as "reasoned opinion". A reasoned opinion is defined as an opinion issued after careful consideration based on the available information and knowledge. (Cooper, 2012) Another form of opinion that national parliaments can send to the European Commission regarding the drafts of its legislative acts is a Political Dialogue. These opinions can be issued on any policy area the Commission is empowered to act. It also serves as an exchange of information between the parliaments and the Commission on both legislative and non-legislative issues. The Commission also responds within the Political Dialogue framework to reasoned opinions received via the EWM that did not meet the threshold for the triggering of the yellow card. (European Commission, 2023c)

The EWM exists to make sure that subsidiarity is respected, and subsidiarity ensures that decisions are made at the most appropriate level. The EWM serves as a procedural tool to monitor and enforce subsidiarity, while subsidiarity itself serves as a guiding concept for deciding how to distribute powers. Both the Early Warning Mechanism and the subsidiarity principle protect the principles of decentralized decision-making within the EU and underscore the importance of the EU respecting the autonomy and sovereignty of its Member States. Subsidiarity and the EWM entail a close review of the competencies of both the Commission and the Member States in a specific area of policy. Together, they provide a framework for cooperation and shared decision-making between the EU and its Member States and promote fairer and more democratic governance.



First and foremost, subsidiarity should be interpreted and applied in a way that is effective in practice: in the form of the EWM. However, the EWM is viewed as a legal assessment of EU legislation, and it is also seen as a political procedure used by national parliaments to intervene in the EU legislative process. (Toth, 1994) To address the main research question, it is first necessary to clarify the meaning of “legal” and “political”. The term “legal” means being derived from, being bound by, and strictly enforced by law. It also implies non-partisanship, as the principles are applied fairly and equally to all. On the other hand, the term “political” is not neutral. It entails decisions made by the will of the political actors who make rules and can even negate laws. The political need not necessarily be tied to law, although a law may be the outcome of the political. The juridical refers to laws, and the political to governance. For EWM to be presented as a legal mechanism, national parliaments can only scrutinize draft proposals according to the principle of subsidiarity as set out in Article 5(3) of the TEU. National parliaments assess whether the EU has acted because the Member States do not have sufficient means to achieve the objectives of the proposed action and because the goals of the proposed action can be better achieved at the Union level. The objectives of the EWM are then to ensure that the EU will pass legislation that complies with the subsidiarity principle. The term “political” encompasses everything that goes beyond the strictly legal framework. The opinions of the Member States are deemed “political” if they indicate a breach of the principle of subsidiarity outside its literal meaning in Article 5 (3). This review is broader in scope and occurs on the national parliaments’ own initiative outside the legal framework provided in Article 5. Following Cooper’s categorization, a further distinction needs to be made. A more flexible understanding of subsidiarity can be taken into account which makes it impossible to distinguish between the principle of subsidiarity and the related principles of proportionality, conferral, and policy effectiveness. Thus, arguments in opinions that may refer to another legal principle will be placed in the “semipolitical” category. Then, the arguments motivated by domestic politics and those with the aim of protecting the national interest, most of which question the justification of the proposal rather than ensuring compliance with the subsidiarity principle will be deemed purely “political”.

### **3.3. The four EU Member States**

Although it is difficult to define precisely what a parliament of a Member State should accomplish inside the EU, as mentioned earlier, it can be distilled into three main functions: electing the government, legislation, oversight which contains scrutiny and control, and

communication. National parliaments of the Member States monitor the implementation of European policies, assess the government's handling of EU matters, and ensure compliance with EU regulations. National parliaments are also responsible for transferring EU directives into national law, ensuring the effective implementation of the legislation at the national level. They also oversee the allocation and use of EU funds, ensuring compliance with EU regulations. By participating in discussions and debates on important issues, national parliaments provide democratic oversight, ensuring transparency and accountability in EU decision-making processes. In addition, parliaments serve as a link between the EU and its citizens. They represent their interests and concerns in decision-making processes in the EU and ensure that its actions are in line with their respective national interests. Parliaments engage in public consultations, organize hearings, and invite stakeholders to express their views on EU policies. Despite these roles, none of these tasks are actively promoted in the EWM; instead, the Commission places the national parliament in the role of a legal body whose main task is to determine whether or not the legislation is lawful, rather than to perform its main functions. Thus, the national parliament sees the subsidiarity principle as a political issue and the EWM as a political procedure. They use their right to issue opinions to assert their national interests and influence legislative decisions at the EU level.

The rights of national parliaments and their roles are set out in the Lisbon Treaty. They have the right to receive documents directly from European institutions. The scope of the existing Protocol on National Parliaments (later Protocol 1) is broadened and includes all draft legislative acts, Council agendas and minutes, annual and other instruments of legislative planning, and the Annual Report of the Court of Auditors. Their role is to make sure the subsidiarity principle is respected based on the Subsidiarity and Proportionality Protocol which establishes an “early warning” system for monitoring possible breaches of subsidiarity. The Protocol on the Application of the Principles of Subsidiarity and Proportionality (later Protocol 2) states that any draft legislative act must contain a detailed statement demonstrating compliance with the principles of subsidiarity and proportionality, including an assessment of the impact on the rules to be adopted by the Member States even for the regional legislation, and elaborating on why legislative objective can be better achieved at Union level, supported by precise qualitative and quantitative indicators. Commission’s drafts need to also comply with the principle of proportionality by taking into account if any burden, whether financial or administrative, for either the Union, national

governments, regional or local authorities, economic operators, and citizens can be minimized. (Jans & Piedrafita, 2009)

The EWM addresses only the subsidiarity component of the proposal, but the justification of legislative drafts must address both the subsidiarity and proportionality elements of the proposals. (Jans & Piedrafita, 2009) The way in which the EWM is used in each national Parliament (Romania, Croatia, Denmark, and Sweden) depends on the characteristics of each parliament. In order to effectively exercise their oversight role, national parliaments must carefully select the arguments they present to the European Commission. Therefore, it is important to discuss their structures, the way they perform scrutiny and give their opinions, and how they perceive the EWM. Together with the empirical analysis, this will help to find answers to secondary research questions. The Romanian, Croatian, Swedish, and Danish parliaments have some similarities in terms of their structures, decision-making processes, and engagement in EU scrutiny, but they also have different characteristics.

### **3.3.1 Romania**

Romania is a semi-presidential representative democratic republic. The Romanian Parliament consists of two chambers: the Chamber of Deputies (*Camera Deputaților*) and the Senate (*Senatul*). Members of the Chamber of Deputies and the Senate are elected through a mixed electoral system that combines both proportional representation and a single-member district system. (Scripca, 2017) Both chambers participate in the legislative process and exercise their respective functions within the framework of the Parliament. “Act on cooperation between the Parliament and the Government of Romania in the field of European Affairs” and “The working procedure for the exercise of parliamentary scrutiny over the decision-making mechanism at the EU level” are two documents that serve as the legal basis for Romania's participation in the EU's decision-making process as well as for monitoring the harmonization of national law with EU law. (Tanasoiu, 2010) They provide a framework for cooperation between the Romanian Parliament or one of its chambers and the Romanian Government. (Romanian Chamber of Deputies, 2023)

While other national parliaments established various procedures to scrutinize the EU decision-making process from the moment of their accession, the Romanian Parliament had fallen behind. Prior to 2011, the Parliament had no such authority over the policy towards EU matters. To note, Romania became an EU Member State in 2007. (Tacea, 2015) Since 2011, there has been a

European Affairs Committee in each of the Chambers. These two committees consider proposed EU legislation either on their own or in cooperation with other standing committees. There is a pronounced distinction between the two chambers' methods for adopting opinions. For example, the Chamber of Deputies can adopt a reasoned opinion without consulting the full Senate, but the Senate must vote on theirs in a plenary session. (Scripca, 2017)

The Romanian Parliament scrutinizes the compliance of EU legislation with the principle of subsidiarity. The European Commission's proposal documents arrive starting the eight-week process after being received by the chambers. The EAC and other sectoral committees receive a list of all draft legislative acts and consultation papers from the General Directorate for Foreign Affairs. The standing committees generally have an advisory role and have a short window of time to issue a written opinion to the EAC. The EAC adopts the final judgment. (Romanian Chamber of Deputies, 2023) However, for each document they want to perform scrutiny on, both the EAC and the committees must formally request Government ministries and agencies to submit a written note of their position on the respective document. These notes are later regarded as a mandatory subsidiarity check for EU legislative proposals and the general examination of the substance of the respective proposal. The final decision of the Parliament is taken in the plenary session for each scrutinized document and is based on the EAC's assessment. The document is then translated into both English and French and forwarded to the European Commission. The National Parliament of Romania also uses Political Dialogue, with the Chamber of Deputies being one of the three most active chambers of all Member States' parliaments. (Romanian Chamber of Deputies, 2018)

The possibility of being more involved in EU matters is generally viewed positively by the Romanian Parliament. However, it still has a rather more symbolic effect on the EU legislature. Parliament's engagement in EU activities therefore still appears to be in a slow process of adjusting to the new multi-level governance structures and adopting the new scrutiny practices. This suggests that the Romanian legislative chambers do not yet have a clearly defined strategy for performing scrutiny, as also shown by several COSAC findings. (Scripca, 2017)

### **3.3.2. Croatia**

Croatia is a democratic parliamentary republic. The Croatian Parliament (*Hrvatski Sabor*) is a unicameral system. Members of Parliament are elected by universal suffrage for a four-year term. (Hrvatski sabor, 2023) The Croatian Parliament partakes in European affairs on the basis of the

Constitution of the Republic of Croatia, the Law on Co-operation of the Croatian Parliament and the Government of the Republic of Croatia in European Affairs, and the Standing Orders of the Croatian Parliament. The Parliament actively participates in the discussions and decision-making procedures of scrutinizing certain EU-relevant issues. The decision-making process in Parliament is debated by parliamentary committees. These committees, specialized in various policy areas, provide important input, scrutinize, and evaluate legislative proposals, conduct expert hearings, and gather relevant opinions. (The Croatian Presidency of the European Union, 2020)

By keeping an eye on the government's actions within the institutions of the European Union and using the authority granted to national parliaments by the Treaty of Lisbon, the Parliament monitors European affairs both directly and indirectly. The Foreign Affairs Committee is often responsible for matters related to the Common Foreign and Security Policy, while the European Affairs Committee usually exercises the competencies of the Croatian Parliament in European affairs. The European Affairs Committee consists of 17 members, including the chair and two vice chairs. It is the only parliamentary committee with two vice chairs, one of whom is elected by the ruling party and the other by the opposition. The EAC oversees the application of EU law and reviews legislative proposals to ensure they meet EU standards while discussing them with government representatives. It works closely with other 29 parliamentary committees, each of which monitors EU policy in its own area of responsibility. (The Croatian Presidency of the European Union, 2020)

The Croatian Parliament scrutinizes European affairs indirectly and directly. Indirect scrutiny begins with a preliminary discussion of EU priorities, which takes place in the meeting of the EAC, with the participation of the Speaker of the Parliament and the Chairmen of all parliamentary groups and committees. Then, the EAC invites all committees to give their own opinions on draft EU legislation and the Commission's initiatives. These specialized parliamentary committees are involved in the scrutiny process from the beginning, as they have the expertise to suggest particular acts that can be included in the Work Program. The committees then submit their recommendations to the EAC. (Hrvatski sabor, 2023) Selected proposals from the committees are forwarded to the EAC for inclusion in the Work Program. Afterward, the EAC adopts their conclusions, on which the Government later bases its further actions toward the European institutions. The EAC also has an additional role of holding hearings for Croatia's candidates who are proposed to be appointed

to EU institutions and bodies. The committee gives an opinion on the proposed candidate, which must be considered by the Government before offering the proposal to the European Union. The direct subsidiarity review procedure can be initiated by any member of the Croatian Parliament, a parliamentary committee, a parliamentary party group, the Government, or at the initiative of the EAC itself. The subsidiarity check itself is conducted by the EAC, which may adopt an opinion on behalf of the Croatian Parliament, thereby establishing a violation of the subsidiarity principle. (Briški & Špiljak, 2014) In addition, any member of the parliament, a parliamentary committee, or a party group is allowed to conduct a Political Dialogue with the European Commission on any EU document or any other EU-regulated business. The opinions are communicated through the European Affairs Committee secretariat. (Croatian Parliament, 2019)

Finally, the EAC has the task of issuing an opinion if it finds that legislative proposals made by the European Commission exceed EU competencies and should instead be addressed at the national level. The Croatian Parliament thus contributes to the system of subsidiarity control by ensuring that decisions are taken at the most appropriate level of governance. Parliament's decision-making process is designed to be transparent. The Parliament welcomes public participation and gives individuals and civil society groups to provide opinions and participate in legislative discussions. In addition, Parliament's website contains a repository of national documents related to the Work Program for the Consideration of the Positions of Croatia. (The Croatian Presidency of the European Union, 2020) In addition, the Croatian Parliament aims to become more involved in EU decision-making through increased reviews of the Commission's draft proposal by using direct scrutiny. (Briški & Špiljak, 2014) However, as in the Romanian case, the whole process is delayed and not efficient enough to meet the required deadlines.

### **3.3.3. Denmark**

Denmark is a constitutional monarchy and a parliamentary democracy. The Monarch is the Head of State, and the Government is led by a Prime Minister. The Danish Parliament (*Folketing*) is unicameral, consisting of a single chamber, and has a multi-party structure. Members of Parliament are elected in general elections held every four years. The Parliament is the primary legislative body, responsible for enacting laws, engaging in debates, and representing the Danish population. The Danish Parliament was the first to introduce a system of negotiating mandates, which compels the Government to acquire negotiating mandates from a parliamentary Committee

before crucial Council discussions. Other Member States have drawn inspiration from the Danish negotiating mandate model while developing their parliamentary processes. The fundamental guidelines for the Danish Parliament's consideration of European policy are set out in accordance with the European Affairs Committee's agreement with the Danish Government and the Danish Accession Act in 1972. According to these documents, the Sectoral Committees and the European Affairs Committee are at the core of the parliamentary review of the Government's EU policies in their respective areas of expertise. The European Affairs Committee (EAC) was established in 1973 as one of 23 Standing Committees. Comprising members from various political parties, this EAC scrutinizes EU matters, monitors the government's handling of EU policies, and evaluates the impact of EU decisions on Denmark. (The Danish Parliament, 2023b) It serves as a platform for discussion, ensuring that the Danish Parliament actively engages in EU-related discussions. Danish ministers who wish to negotiate and vote on behalf of Denmark must first get a mandate from the EAC. The Ministers submit topics that the Government regards to be substantial or of considerable importance on the EAC agenda. If there are topics on the agenda that involve the adoption of proposals of considerable importance, the Minister will provide the mandate requested by the Danish Government on the topic orally and elaborate on the Government's position. (The Folketing's EU Information Centre, 2019) Committee members may then question the Minister and state their party's position on one or more of the agenda items. At the end, the Committee Chair summarizes the results of the discussion and draws conclusions. If concerns regarding compliance with the principle of subsidiarity arise during the discussions, the EAC will issue an opinion before it is forwarded to the relevant European institutions. (Danish Parliament, 2023a)

For more than 30 years, this arrangement has demonstrated its durability and served as an example for other EU members. Until 2005, the Folketing's EAC was largely responsible for handling EU-related issues. Since then, the standing committees would start taking a more active role in the examination of EU issues. In order to uphold Denmark's long-standing history of democratic scrutiny over the EU legislation, it was decided that the standing committees must play a bigger role due to the increase in the sheer volume and complexity of the proposal made by the European Commission. (Mejdahl, 2005) When the Lisbon Treaty entered into effect in 2009, the Danish Parliament established an internal procedure for monitoring the concept of subsidiarity, based on tight coordination between the Sectoral Committees and the European Affairs Committee. The Sectoral Committees of the Folketing consider EU topics that fall within their

respective competencies. Due to their technical proficiency in many policy fields, the involvement of the Sectoral Committees is of the highest importance. The Committees are required by law to address all EU-related problems and thus play a crucial role in the scrutiny process checking if the subsidiarity principle is taken into account by the European Commission. These Committees along with the European Affairs Committee also issue joint statements on green and white papers sent by the Commission. (The Danish Parliament, 2023b)

Transparency and public participation in decision-making are priorities for the Danish Parliament. Parliamentary committees undertake public to allow interested parties, experts, and individuals to express their opinions and viewpoints on proposed legislation. In addition, most meetings of the European Affairs Committee are open to the public and can be followed online on the Danish Parliament's website. This inclusive strategy promotes an active and informed environment for decision-making by ensuring that different opinions are heard and considered. (The Danish Parliament, 2023b)

#### **3.3.4. Sweden**

Sweden is also a constitutional monarchy with a parliamentary democracy. The Swedish Parliament has a unicameral structure and consists of a single chamber known as the Riksdag. Members of Parliament are elected in general elections held every four years. The Swedish Constitution consists of four fundamental laws: the Instrument of Government, the Act of Succession, the Freedom of the Press Act, and the Fundamental Law on Freedom of Expression. The Instrument of Government is not based on the idea of separation of powers but is considered monistic with a single power center: the citizens of the country. There is also the Riksdag Act, which contains procedural rules for the work of the Swedish Parliament. (Rittelmeyer & Crawford, 2022)

Fifteen sectoral committees, that make up the Riksdag, select the agenda of EU issues to discuss with the government at an early stage of the policy-making process. This includes the Committee on European Union Affairs (CEUA). Although the CEUA is responsible for overseeing all EU-related issues, the sectoral committees still handle the majority of the work related to their respective committees. These include finance, justice, culture, education, environment and agriculture, and the labor market. The CEUA, which was founded when Sweden joined the EU in 1995, consists of 17 members and 81 substitutes which is usually a larger number, although it



should be at least equal to the number of members. Seventeen members represent the political parties according to their proportional strength in the parliament. Representation on the other committees is based on the number of seats held by each political party in the Riksdag. (Jonsson Cornell, 2016) Interestingly, according to the Riksdag's Act, the Riksdag's Committee on the Constitution is responsible for monitoring the application of the subsidiarity principle by the sectoral committees, and reporting back to the Parliament, instead of the CEUA. (Swedish Parliament, 2023)

While most national EU parliaments select the documents to scrutinize, the sectoral committees take over the examination of subsidiarity under the EWM thus making it decentralized. They decide whether the Riksdag should send an opinion to the Commission or not. This contributes significantly to the fact that the Swedish Parliament issues by far the most reasoned opinions on subsidiarity. Other documents sent by the EU are screened by the secretariat for EU coordination conducts and then a consultation with the secretariats of the committees starts. They discuss the examination of EU documents but in the end, the speaker chooses which EU papers will be studied after consulting with the group leaders of the major parties. Furthermore, the Swedish Parliament uses a number of techniques to ensure openness and public involvement. Parliamentary committees undertake public hearings to allow interested parties, experts, and individuals to express their opinions on proposed legislation. These hearings allow everyone to participate and make informed decisions. (Rittelmeyer & Crawford, 2022)

The Riksdag's Chamber distributes the arriving Commission drafts to the relevant sectoral committee with the help of the secretariat for EU issues. Partial inspection allows for the possibility that both the entire plan and certain portions may be deemed to violate the principle of subsidiarity. According to Swedish law, the inspection begins with a determination of the legality of the proposed measure, taking into consideration the concept of conferred powers. Once the proper legal foundation has been established, the substance of the proposal is no longer to be considered. If a committee finds a violation of the subsidiarity principle, it informs the Chamber in a statement and suggests that the Swedish Parliament send a well-reasoned opinion to the Commission. A simple majority vote is used by the Chamber to settle the matter. (Swedish Parliament, 2023) It is important to note that the Government must respond to a sectoral committee's request for an assessment of the subsidiarity of a draft within two weeks of the date the committee made the

request. However, committees are not required to consult with the government. Sectoral committees can also ask for other committees' evaluation, including the Committee on the Constitution. The Committee has the task of overseeing and assessing the sectoral committee's examination of the subsidiarity concept and sending a written report to the Chamber once a year. In addition, the Riksdag has assigned the Committee on the Constitution the duty of offering a "helicopter perspective" on the subsidiarity review. In order to prevent future breaches of subsidiarity, the Committee examines the cumulative findings of the sectoral committees' examinations of the allocation of authority between the EU and its Member States. This function of the Committee of essentially identifying the EU's rising overstretch of their competencies helps the Riksdag to defend Sweden's interests as a Member State against, in the case of overreaching EU Institutions. In addition, the influence of the Committee on the Constitution shows that the Swedish Parliament views its task of scrutinizing EU legislative drafts as a tool for protecting decentralization and for detecting any competence overstretching coming from the European Commission. (Jonsson Cornell, 2016)

In addition to the European Affairs Committee, to better perform their scrutiny duty, all national parliaments cooperate with their Members of the European Parliament (MEP) in discussing European issues of mutual interest. This includes meetings on a political party basis and meetings between the MEPs and the Members of their respective European Affairs Committee. Furthermore, each Parliament participates in interparliamentary cooperation at the EU level. They engage in exchanges of information and discussions with other national parliaments within the framework of the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC). COSAC provides a platform for parliamentarians to share experiences, exchange views on EU policies, and coordinate their activities, fostering dialogue and cooperation between the parliaments. Such cooperation strengthens the parliamentary scrutiny of EU affairs and ensures more active involvement of national parliaments in shaping EU decisions. (Swedish Parliament, 2023)

## 4. Methods and data

In order to find answers to the research questions, this thesis looked at the data in the form of texts of the opinions uploaded online by the national parliaments on the European Commission's website and the IPEX website. Since the research was based on the analysis of texts, a qualitative content analysis of the submitted opinions was conducted. Qualitative content analysis requires the interpretation of the data through systematic classification and identifying certain themes. (Bengtsson, 2016) Samples for this type of content analysis include chosen texts that might shed light on the research questions posed. By looking at meanings, themes, and patterns in a text, qualitative content analysis does not imply only collecting factual information from the text but allows for a subjective yet scientific understanding of social reality. (Forman & Damschroder, 2007) It includes grouping the chosen texts into categories or topics based on inference and interpretation. By carefully examining and continually comparing the data, inductive reasoning was employed to identify characteristics of content in the reasoned opinions. The collected textual data provided insights into motivations of national parliaments for stating their objections to the proposals by the European Commission.

This thesis used empirical and controlled analysis of the opinions on submitted by four Member States: Croatia, Romania, Sweden, and Denmark. Because Croatia wasn't a member of the EU when the EWM was introduced, this thesis analyzed reasoned opinions and Political Dialogues starting from the year 2013 when Croatia entered the European Union up until the year 2022. The opinions from 2023 are not included because the data is incomplete. It is important to note that this evaluation put focus on the opinions given in the state of their decline in numbers where scholars have raised severe doubts about the efficacy of the EWM. (Borońska-Hryniewiecka, 2017) Also, there has been little research done on the more recent opinions submitted, especially Croatia's opinions.

The data on what opinions should be analyzed was sourced from the European Commission's "Annual reports on the application of the principles of subsidiarity and proportionality and relations with National Parliaments". (European Commission, 2023b) The annual reports provided an official source of how many reasoned opinions the member states sent to the European Commission in the prescribed time frame since the many other sources varied on the numbers. For example, the official websites of the national parliaments either did not differentiate between their

reasoned opinions and Political Dialogues or did not provide them in the English language. In addition, the opinions they uploaded on the IPEX website provided by the national parliaments themselves in parts deviated greatly from the European Commission’s official data. The IPEX website still proved to be the best place to source the texts of the reasoned opinions and Political Dialogues, and some additional opinions were sourced from the Commission’s website. It is important to point out that the textual data in the form of the opinions is incomplete. Some were not uploaded online by the national parliaments. Taking this into account, in the end, the total number of opinions analyzed was 494. Romania is a country with a higher number of opinions given, 334 in total, then is Sweden with 132. On the other hand, Denmark has 19 opinions while Croatia only 9. Out of the total number of opinions that were examined, 60 were reasoned opinions. Depending on the opinion, the texts were read two or more times in order to properly determine the category they were eventually placed in.

The scope of primary data is large but crucial for the inductive research pathway of this thesis. The reasoned opinions were separated from the Political Dialogues and assessed before being sorted. The opinions were grouped into the political, semipolitical, or legal category according to the arguments presented by the national parliaments and criteria which were elaborated on in the previous section. Numbers 0, 1, and 2 were assigned to each opinion depending on the category it belongs to. 0 corresponds with the category of “legal”, 1 with “semipolitical” and 2 with “political.” An example of coding national parliaments’ reasoned opinions is provided in the table below (Table 1).

*Table 1. Coding table*

TYPE	legal	semipolitical	political
Operationalized by	subsidiarity principle in the strictest legal sense	invoking other EU principles (e.g., conferral or legality)	not relating to any principle (e.g., protecting national interest, insufficient justification)
Examples of findings with value 0	“...which is an action going beyond the role of the European Commission laid in the treaties, this being a		

	<p>task conferred exclusively within the legislative mechanism of the Member States.”<sup>1</sup></p> <p>“...best regulated at national level and by taking into account traditional national practices.</p> <p>Furthermore, the proposed measures... are beyond the scope of the EU’s supervisory powers...”<sup>2</sup></p> <p>“...has no objections to the Commission’s assessment that appropriate information on advance cross-border tax rulings and advance pricing information can only be achieved at Union level.”<sup>3</sup></p>		
<p>Examples of findings with value 1</p>		<p>“...the definitions and the focus of the proposal as it is currently formulated ...which is not compatible with the principle of subsidiarity.”<sup>4</sup></p> <p>“...it remains ambiguous to what extent competencies to adopt implementing acts are transferred to the</p>	

<sup>1</sup> Romanian *Camera Deputaţilor* on COM (2016) 861

<sup>2</sup> Danish *Folketing* on COM(2020) 682

<sup>3</sup> Swedish *Riksdag* on COM (2015) 135

<sup>4</sup> Swedish *Riksdag* on COM (2021) 706

		<p>Commission by virtue of the proposal.”<sup>5</sup></p> <p>“The proposal for Regulation raises questions about the principle of proportionality...”<sup>6</sup></p>	
<p>Examples of findings with value 2</p>			<p>“...the Riksdag is strongly opposed to more binding directives that destroy functioning labor market models...has seen a number of initiatives from the European Commission that pose a direct threat to the Swedish labor market model...”<sup>7</sup></p> <p>“...maintains the objections, observations, and recommendations in the reasoned opinion of the Chamber of Deputies...”<sup>8</sup></p> <p>“The Committee considers that the proposal’s demands for taxation of actors in nonparticipating member states are problematic.”<sup>9</sup></p>

Such a framework for empirical analysis was done in order to achieve reliability and validity of the way the textual data was examined. Essentially, the opinion belongs in the “legal” category if the arguments given related to the subsidiarity principle in the strictest legal sense, within the

<sup>5</sup> Danish *Folketing* on COM(2013) 133

<sup>6</sup> Romanian *Senatul* COM(2017) 277

<sup>7</sup> Swedish *Riksdag* on COM(2021) 762

<sup>8</sup> Romanian *Camera Deputaților* on COM (2016) 270

<sup>9</sup> Swedish *Riksdag* on COM (2013) 71

narrow meaning of Article 5 (3). As mentioned before, it is “the principle whereby the EU does not take action (except in the areas that fall within its exclusive jurisdiction), unless it is more effective than action taken at the national, regional or local level”. (EUR-Lex, 2023a) The opinion will be considered “semipolitical” if the opinion took the subsidiarity principle in a broader sense, invoking other EU principles, another Article or a Protocol, and if the national parliament questions legality of the proposal. Other EU principles include, first and foremost, the principle of proportionality. Article 5 (4) of the Treaty on the European Union lays forth the proportionality principle. It aims to put acts taken by institutions of the EU within predetermined parameters. Action taken by the EU must be appropriate to reach the desired end, necessary to reach the desired end, and not place a disproportionate burden on the individual relative to the goal that is being pursued. The requirements for applying the concept are laid out in Protocol No. 2 on the implementation of the subsidiarity and proportionality principles annexed to the treaties. (EUR-Lex, 2023b) Article 5 of the TEU also defines the principle of conferral. It states that the EU only operates within the confines of the authority that EU Member States have granted it through various treaties as specified in Articles 2 through 6 of the Treaty on the Functioning of the European Union. Hence, the Member States retain complete authority over any competencies not granted to the EU. (EUR-Lex, 2023c) Any other reason specified in the opinion that does not relate to subsidiarity or any other legal principle was deemed purely “political”. This included cases of undermining the national interests of a Member State, as well as making requests and recommendations regarding the proposal itself. In addition, the categorization of the national parliaments’ opinions displays in what way each state’s national parliament used the EWM and provides additional understanding of the arguments they support. As a part of the qualitative content analysis, the coding also gives a basis for further inductive reasoning to be employed to determine the factors influencing the reasoning behind the opinions.

## **5. Empirical results and discussion**

With the intention of providing the answer to the main research question of whether the EWM is a political or a legal procedure, an empirical analysis was conducted of both reasoned opinions and Political Dialogues submitted by the national parliaments of four Member States. The states selected according to the criteria discussed in the previous sections were Romania, Croatia,

Denmark, and Sweden. The chosen reasoned opinions submitted as per guidelines prescribed in the TEU were thoroughly analyzed and categorized in accordance with previous categorizations. (Cooper, 2016; Jaroszyński, 2020) The complete overview of the results from the qualitative content analysis is displayed in Table 2.

*Table 2. Number of reasoned opinions of each country by category*

<b>Country</b>	<b>Value</b>			<b>Total</b>
	0	1	2	<b>No.</b>
<b>ROMANIA</b>	5	2	4	11
<b>CROATIA</b>	2	0	0	2
<b>DENMARK</b>	6	1	1	8
<b>SWEDEN</b>	29	3	7	39
				60

0 – legal; 1 – semi-political; 2 - political

The results presented in Table 2 confirm to some extent the lack of consensus that the EWM is either legal or political. The overall data varies widely across countries, ranging from 0 to 39, but looking at their relationship to each other in a single country, we find that the proportion of opinions considered legal ranges from 45.5% (Romania), 75% (Denmark), 74.4% (Sweden) to 100% (Croatia), while the proportion considered political ranges from 0% (Croatia), 12.5% (Denmark), 17.9% (Sweden) to 36.4% (Romania). The semi-political category delivered small, almost insignificant percentages. Denmark had one reasoned opinion belonging to that category, Romania had 2, Sweden had 3, and Croatia none. Just looking at the numbers alone, it can be deduced that analyzed EU Member States perform subsidiarity scrutiny according to the narrow interpretation in Article 5 of TEU. The only visible outlier is Romania which is closest to a 50:50 split.

Political Dialogues, on the other hand, were greater in number and less structured in their argumentation. By using this informal and voluntary tool, national parliaments voiced their concerns and engaged in communication with the European Commission. The data examined showed that national parliaments actively employed Political Dialogue. However, they used it to varying degrees of intensity. The distinctions among the parliaments of the four Member States,



as well as their numbers in contrast to their reasoned opinions labeled “political”, are shown in Table 3.

*Table 3. Number of “political” reasoned opinions vs. Political Dialogues of each country*

<b>Country</b>	<b>Reasoned opinions with value 2</b>	<b>Political Dialogues</b>	<b>Total No. of opinions</b>
<b>ROMANIA</b>	4	323	334
<b>CROATIA</b>	0	7	9
<b>DENMARK</b>	1	11	19
<b>SWEDEN</b>	7	92	131

### **5.1. Romania**

The Romanian parliament, both the Chamber of Deputies and the Senate, conveyed the opinions to the European Commission. This is partly due to the Romanian parliament being bicameral unlike the rest of the national parliaments studied. Both chambers of Parliament are very active, albeit in different areas. Romania’s parliamentary chambers, however, do not always see eye to eye and have sent differing opinions in several cases. Out of eleven reasoned opinions only two were deemed to be “semi-political” as one referred to the principle of proportionality and the other one to the principle of conferral without mentioning subsidiarity. Five reasoned opinions were of a legal nature. These opinions were prepared in accordance with Protocol 2 of the TEU as stated clearly in their opinions. Romanian parliament often checks for both subsidiarity and proportionality principles and addresses them in their opinions. Another five reasoned opinions were deemed to be political in nature. Interestingly, in cases where they put out a reasoned opinion stating that the principle of subsidiary was respected, the Chamber of Deputies and the Senate use the opportunity to put in the document their objections, observations, and recommendations. These documents do not differ significantly from Political Dialogues sent by either of the two parliamentary chambers. The structure of their Dialogues was nearly identical. The Romanian parliament uses the EWM to exert its political influence on EU legislation in almost half of the cases. The Chamber of Deputies generally invoked its duty under Protocol 1 of the TEU, agreed with the draft proposal, and then proceeded to make recommendations for the Commission to amend its proposal or simply expressed its concerns about specific parts of the proposal as it was

also done in Political Dialogues. This was done to forward specific national interests of Romania. It is important to note that Romania is a Member State that participates in Political Dialogue frequently and with a high number of opinions submitted, showing its affinity to try to influence the Commission's decision-making more informally as well.

## **5.2. Croatia**

Croatia, as the newest member of the European union, expectedly sent out the lowest number of their opinions to the European Commission. As per the European Commission's annual reports, Croatia sent only two reasoned opinions. Both reasoned opinions were categorized as "legal", i.e., using the subsidiarity principle in their reasoning for performing scrutiny and both were sufficiently elaborated. Croatian *Sabor* made several Political Dialogues with the Commission in which Croatia tends to feel disadvantaged as a new member and advocate for its national interests. They sent out a positive opinion if the proposal did "not put Croatia, as a new Member of the European Union, in a disadvantaged position in relation to other Member States."<sup>10</sup> The rest of their Political Dialogues were sent because Sabor was unable to provide an opinion due to a lack of clarity of the draft legislative proposal itself. This analysis leads to the conclusion that, although Croatia did not send many opinions in general – only 9 were uploaded by the Croatian parliament – the newest Member of the EU can understand the use and the significance of the EWM in its strictest sense and scrutinize accordingly.

## **5.3. Denmark**

The Danish national parliament (*Folketing*) is considered to be highly competent in its ability to properly scrutinize the proposals coming from the European Commission. It also played a prominent role in the introduction of the EWM which led to the first yellow card, as mentioned earlier. (Christensen, 2015) The data largely supports this assumption as five out of eight reasoned opinions were categorized as purely "legal". The opinions of the Danish Parliament mostly invoked the principle of subsidiarity in the strictest sense as enshrined in Protocol 2 of the TEU. Only one opinion was categorized as "semi-political" invoking the principle of proportionality instead. The only reasoned opinion deemed political was the one including political statements from the Danish political parties and that was clearly noted. There was no intention of protecting national interest as was the case with Romania. The political parties were invoking the interests of

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<sup>10</sup> Croatian *Sabor* on COM(2014) 32

other EU member states as well. Furthermore, the analysis of Folketing's Political Dialogues has shown them to be exactly that, political in nature, while in the majority of dialogues, the Danish Parliament was notifying the European Commission they agreed with the general proposal. The Folketing has shown that it can use the EWM for legal purposes and that it considers the mechanism to be a legal procedure of holding the European Commission accountable for the lack of proper legal argumentation. If the Danish national parliament wanted to make a political statement, they marked it so.

#### **5.4. Sweden**

The Swedish Parliament (*Riksdag*) is the parliament with the largest number of parliament opinions submitted to the European Commission which were analyzed in this thesis. The Riksdag gave out more opinions with a value of 0 (legal) than with the value 2 (political), 29 and 7, respectively. Only three opinions are classified as "semi-political" because Sweden specifically addressed the principle of proportionality. This is because the Swedish Riksdag is known for linking proportionality and subsidiarity. (House of Lords, 2014) Thus, it can be concluded that Sweden is more prone to labeling the Commission's proposal "far-reaching"<sup>11</sup> in the sense of a purely legal assessment of the subsidiary principle. This was to be expected given the strict rules for the national parliament in Swedish law. However, this analysis demonstrates that the Swedish committees do not adhere properly to the Committee on the Constitution's subsidiarity requirement. Their approach to forming opinions is a more flexible way, taking into account factors that are not exactly related to subsidiarity, like the principle of proportionality for example. They are addressing not only the content of the proposal but also the proposal's legal foundation while also taking their own national interest in mind. They also address the problem of the eight-week deadline. On multiple occasions, the Riksdag claimed that the Commission's proposal was not precise enough, leaving the parliament unable to give its opinion at such short notice. Also, like the other national parliaments, they used the sent opinions to further their influence on the legislation by giving recommendations, making requests, and outright rejecting certain parts of the proposals.

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<sup>11</sup> *Riksdag* on COM(2013) 27, 28, 29, 30 and 31

## **5.5. General findings**

Examining the content of the opinions as part of this analysis has provided insights into the similarities and differences between the four EU Member States. The content of the texts also supports some of the findings of previous research on the factors and influences affecting national parliaments when issuing their opinions. (Gattermann & Heffler, 2013; Winzen, 2012)

Safeguarding the principle of subsidiarity proved to be the most important and common concern. National parliaments were mainly concerned with the question of whether or not the legislation proposed by the Commission would be better dealt with by the EU institutions or the individual Member States. National interests were also frequently expressed in the form of objections to the Commission's proposals, with the Romanian and Danish parliaments being the most precise about the infringements, often in the form of requests for further clarification, but also in the form of suggestions, recommendations, and outright rejection of the content of many draft proposals. The principle of subsidiarity in the strict sense has proved too narrow for national parliaments to attempt to block or amend the Commissions' legislative proposals, as predicted by Jans & Piedrafita (2009). Similar to previous academic papers discussed in the literature review, the principle of proportionality was in most cases cited together with the principle of subsidiarity both in the reasoned opinions and the Political Dialogues, in particular by Romania and Sweden. Their national parliaments considered that several legislative proposals were in breach of the principle of proportionality, but at the same time found no breach of the principle of subsidiarity. It is important to reiterate that this does not fall under the subsidiarity check. For a proposal to be scrutinized, the committees must find clear evidence that the proposed draft breaches the principle of subsidiarity. Furthermore, Romania's reasoned opinions are rather extensive and wordy, as Scripca (2017) also notes. This sometimes makes it difficult to assess their reasoning when they even invoke the principle of subsidiarity. It can be concluded that the Romanian Parliament takes a more flexible stance than other Member States when examining draft proposals. The opinions submitted by Sweden, Denmark, and Croatia are better structured and more precise in terms of language. The lack of clarity of the proposal itself was also cited as one of the commonly communicated problems shared by all four Member States, although all could benefit from a little more detail in those complaints. The criticism about the inadequacy of the European Commission's elaborations is mostly only two sentences long.

Considering that the national parliaments have identified several difficulties while performing scrutiny, both Romania and Sweden have been able to put out opinions to scrutiny fairly consistently over the years. However, only Sweden has been able to issue reasoned opinions consistently. Despite Romania putting a significant amount of the European Commission's draft proposals to scrutiny, only eleven were reasoned opinions in the Commission's annual reports from 2013 to 2022. In view of the high number of Romanian opinions analyzed (334), eleven reasoned opinions account for only 2.2%. In contrast, Denmark has the best ratio with 42.1% of its analyzed texts being reasoned opinions. Denmark and Sweden, both older Member States of the EU, have better ratios than the newer Member States, Romania, and Croatia. This can be explained by their level of experience in issuing reasoned opinions. The experience factor has a major influence on the choice of argumentation. Denmark and Sweden were able to provide more reasoned opinions in their own respective ratios, than Romania and Croatia. The two Nordic states joined the Union in 1973 and 1995, respectively. Romania and Croatia joined the EU in 2007 and 2013. Therefore, Denmark and Sweden have had more time to perfect their skills in scrutiny proceedings than the two younger Member States. Experience in performing scrutiny also means that they are faster and more competent in issuing a reasoned opinion in a timely manner. The literature points out that time is of the essence when performing scrutiny. (Knutelská, 2011; Jonsson Cornell, 2016) The more time available to engage with the draft proposal, the greater the chances of doing so and getting it right. This is exactly what all four national parliaments have stated in their submitted opinions. Another interesting factor that can be deduced from the analysis of the reasoned opinions is the salience of the draft legislative act. In cases where the draft legislative act proposes a new law, as opposed to a proposal to amend or repeal existing legislation, the Member States were more likely to submit an opinion. This is to be expected, as a completely new piece of legislation would lead to more significant changes in national legislation and offer the opportunity to influence EU legislation more strongly. The strength of the Member States' Committee on EU-related affairs as opposed to the sectoral committees proved to be an important factor in differentiating between EU Member States. In Romania, where the review process focuses on the European Affairs Committee rather than the sectoral committees, far more opinions were issued that were classified as political. This was not the case in the other three Member States. The proportion of reasoned opinions classified as political was significantly lower than in Romania.

## 6. Conclusions

Both the principle of subsidiarity and the Early Warning Mechanism are essential elements of the European Union's decision-making process, ensuring a balanced distribution of power between the EU and its Member States. The principle of subsidiarity is a crucial element of the framework of governance of the European Union, as it aims to strike a balance between the need for common European action and respect for national sovereignty and local decision-making by Member States. The principle upholds the idea that decisions should be taken at the most appropriate level, and close to citizens as possible. It ensures that the EU respects the autonomy of its Member States and allows them to retain control over matters that fall within their national jurisdiction. It serves as a safeguard against unnecessary centralization and gives national parliaments the opportunity to engage and scrutinize, which strengthens democratic accountability within the EU. While subsidiarity aims to prevent unnecessary centralization of power, the Early Warning Mechanism serves as a safeguard against excessive EU interference in matters that should be the responsibility of the Member States. Both subsidiarity and the EWM aim to strike a balance between decision-making at EU level and national decision-making. It is therefore crucial that national parliaments effectively monitor the actions of the European institutions. The role of the EWM in EU affairs is to ensure the legitimacy and responsibility for the Union's actions. The mechanism provides national parliaments with an early opportunity to correct possible violations and promotes closer cooperation between the EU institutions and the parliaments of the Member States. They do this in the form of a reasoned opinion.

A reasoned opinion is a formal declaration made by a national parliament in accordance with the procedures laid down in the EU treaties within the legal EU framework. Its submission is required by the TEU as the parliaments assess the proposal from the European Commission in accordance with the articles of the TEU. The Commission is legally obligated to consider and respond to these opinions, essentially entering into a legal dialogue with the parliaments of the Member States. The legal significance also lies in the fact that they can trigger a special procedure within the EU – the Early Warning Mechanism – and thus influence the legal handling of the legislative proposal. While most of the reasoned opinions examined in this thesis had a legal dimension, some also had a significant political aspect. They included a political affiliation when analyzing whether the proposed legislation strikes the right balance between the EU level of

decision-making and the national autonomy of the respective Member States. This is essentially their biased political perspective on the appropriate distribution of powers within the European Union. They are also political in the sense that they represent the views of the respective Member State and their precise national interests. By issuing such reasoned opinions, national parliaments can exert a certain influence on the decision-making process of the EU institutions. It also allows them to express their position on a particular issue, which can of course influence the outcome of a legislative proposal and even increase the overall influence of the Member State in the EU. In some cases, national parliaments submitted reasoned opinions that encompassed both the parliaments' political assessments and their legal obligations within the EU institutional framework – subsidiarity scrutiny. They combined political influence with the subsidiarity check as they exerted influence on the decision-making process in the EU, while at the same time more or less adhering to the legal procedures established by the EU treaties.

Nevertheless, this thesis has attempted to evaluate the nature of the Early Warning Mechanism in terms of its effectiveness in practice. Concepts, especially those that guide policies or laws, need to be interpreted in a way that is consistent with practical realities. An interpretation that aligns with the spirit and purpose of the concept increases the likelihood of a successful outcome. The empirical analysis of the reasoned opinions of four European Member States (Romania, Croatia, Denmark, and Sweden) has shown that states cannot fully commit to the way in which they interpret their role in the scrutiny of legislative proposals. The reasoned opinions submitted were quite diverse, reflecting the debates on the dual nature of subsidiarity itself and, consequently, on the nature of the Early Warning Mechanism. However, most of the reasoned opinions examined in this thesis dealt directly with the principle of subsidiarity as prescribed in the articles of the TEU. It can therefore be concluded that the EWM is a legal procedure. All four Member States have demonstrated often enough that they comprehend the articles of the TEU well enough to perform scrutiny accordingly. They have understood the EWM as a legal concept that is codified and regulated, providing a basis for the interpretation and application of the law. They recognized the mechanism as their right and obligations and were guided by it in their legal reasoning and decision-making. National parliaments accepted the European Commission's concept of subsidiarity, which is based on a system of thorough impact assessments as proposed by Cooper in the Legal Rule-Following Approach to the EWM. (Cooper, 2016) The parliaments addressed additional issues they might have about a proposal in Political Dialogue. Moreover, taking into

account the definition of subsidiarity in its strictest sense, as enshrined in the TEU, and the Commission's internal knowledge in defining its requirements, reasoned opinions are rare in practice as a legislative proposal requiring them already exists. For this reason, the EWM is mainly used in extreme circumstances, i.e. when the Commission has made a mistake in its assessment of subsidiarity. It should be noted that the national parliaments occasionally used their opinions to influence legislation and promote their respective national interests, albeit some more than others. However, this is somewhat understandable, as national parliaments are primarily a political and not a legal body. Dealing with legislation at the European level under EU conditions is therefore much more demanding. Compared to the national level, the process of scrutiny at EU level is far more intricate and detailed. However, as shown in Table 2, this number is not significant enough to influence the way in which the Early Warning Mechanism is perceived. The number of outlier reasoned opinions varied from Member State to Member State. Their share of the total percentage was low in three out of four Member States. The fourth Member State, Romania, was the only one with a significant number of reasoned opinions labelled as political. The Romanian Parliament generally does not follow the Commission's understanding of subsidiarity. Both the Chamber of Deputies and the Senate have participated intensively in Political Dialogue and used the EWM in a similar way. However, by choosing to issue opinions within the framework of Political Dialogue rather than through the EWM, the Romanian Parliament indicates that it recognizes the constrictions of the mechanism. As noted in the findings of this thesis, Romania (and Croatia) are both relatively new and their parliaments still have a space for improvement. This only further proves that in order to fully exploit the potential of the EWM, continuous efforts are needed to improve awareness and understanding among national parliaments with reasoned opinions comparable to Romania's. Strengthening communication channels and facilitating a more systematic exchange of information can further increase the effectiveness of the EWM. The legal nature of the EWM contributes to the overall balance of power and sovereignty in the EU's multi-level governance structure. With the power to issue opinions, national parliaments of the EU Member States represent a *de facto* legal check and balance, and the EWM strengthens its influence at the EU level. It empowers them to take a more prominent position in the EU structure and be one step closer to decreasing the democratic deficit inside the European Union.



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