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Research Article

## The Difficulty in Engaging the Engaged: Administrative Adaptation to the Early Warning System within the UK Houses of Parliament

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### ***Citation***

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## Abstract

This article applies a mixed-methods approach through semi-structured interviews and document analysis to provide a comprehensive account of administrative and behavioural adaptation within the UK Houses of Parliament (HoP) to the EU's subsidiarity monitoring mechanism, the Early Warning System (EWS). The article also tests theoretical assumptions regarding the adaptation and use of the EWS on this basis, confirming that Eurosceptic MPs bolster the use of the EWS and finding that the HoP are an outlier among bicameral legislatures, as the lower chamber was the primary user of the EWS. Overall, results demonstrate that both the House of Commons and the House of Lords treated the EWS as an optional bolt-on when adapting to the mechanism. Furthermore, the EWS did not encourage the HoP to increase engagement with UK devolved legislatures, but the mechanism contributed to the mainstreaming of EU scrutiny in the case of the Welsh and Scottish legislatures.

## Keywords

United Kingdom; Early Warning System; Subsidiarity; National parliaments; EU scrutiny; Administrative adaptation; Behavioural change; Devolution; Scotland; Wales

Due to the growing complexity of European multi-level governance, some national parliaments (NPs) across the EU are seeking pathways to increase their influence over supranational EU decision-making processes. In this spirit, the Treaty of Lisbon in 2009 introduced a raft of changes to address these demands. Pre-eminently, the introduction of the Early Warning System (EWS, also known as the 'reasoned opinion procedure') gave NPs the right to submit reasoned opinions concerning draft EU legislation in areas of shared competence that might violate the principle of subsidiarity. The UK Houses of Parliament (HoP) were one of the main advocates for introducing such a mechanism prior to the Treaty of Lisbon (Wintour 2003; Granat 2018). After 2009, the HoP also became relatively prolific users of the reasoned opinions procedure (Malang et al. 2017: Table I; Cygan et al. 2020: 1609) and contributed to debates about further developing the EWS (House of Lords 2013a; Cooper 2016). Although the United Kingdom (UK) left formal EU inter-parliamentary cooperation frameworks due to Brexit, the UK HoP experience with adapting to the EWS holds relevant insights for the post-Brexit HoP as well as EU NPs.

Although the HoP's use of the mechanism received academic attention (Huff and Smith 2015: 322), little is known about the details of administrative and behavioural changes stemming from the EWS within the UK legislature. Undertaking this examination can produce novel insights regarding the HoP's approaches to EU scrutiny in the immediate run-up to the 2016 referendum. Furthermore, adaptation to the EWS was the last major change to HoP EU scrutiny frameworks before the 2016 referendum (Cygan et al. 2020). Therefore, the process of the adaptation to the EWS can produce clues regarding the future trajectory of post-Brexit HoP engagement with scrutinising EU legislation. Lastly, as subnational legislatures also received the right to participate in the EWS through their national legislatures (Högenauer 2019), adaptation to the EWS might have also resulted in administrative and behavioural change within the devolved legislatures of Scotland, Wales, and Northern Ireland. Although a limited range of studies touch on this matter in the context of the UK (Högenauer 2017; Borońska-Hryniewiecka 2017), further studies can reveal if this change resulted in more devolved EU scrutiny activities and enabled the expansion of legislative networks between (sub)national NPs and UK devolved administrations. In the context of the burgeoning Scottish independence movement (Johns et al. 2020), these changes might also have an impact in terms of preparing for EU scrutiny as a future independent member state of the EU.

Understanding the role and potential of the EWS also remains important in the context of the EU. Despite early scepticism about the utility of the EWS (Raunio 2010; de Wilde 2012), the mechanism plays important role in informing the European Commission (EC) about the viability of draft legislative proposals (van Gruisen and Huysmans 2020). In addition, the mechanism can act as a significant incentive for NPs to increase their general engagement with EU scrutiny. The EWS reconfigures perceptions of NP MPs regarding the importance of EU scrutiny, as participating in EU affairs is now a legal obligation for them due to the Treaty of Lisbon. Furthermore, the EWS widened the access of NPs to EU documentation, providing further incentives for more substantial involvement (Miklin 2017). Therefore, evaluating expectations which relate to behavioural aspects of adaptation to the EWS within NPs in general remains a salient matter.

In this manner, this article considers whether EWS-related adaptation led to an increase in the speed and scope of or resources invested in EU scrutiny within the HoP and if upper chambers tend to make more use of the EWS than lower chambers (Huysmans 2019). Furthermore, reviewing administrative adaptation to the reasoned opinions procedure in the context of the HoP can provide further information on whether Eurosceptic MPs tend to increase the use of the EWS (Huysmans 2019). It can also provide further information on the EWS acting as an incentive for networking amongst NPs (Cooper 2018, 2015). The article also discusses administrative change triggered by the EWS within the three devolved legislatures of the UK and whether it led to the further development of their capacities to conduct EU scrutiny.

To examine these issues and to provide a comprehensive overview of the EWS administrative adaptation process within the HoP, this article applies a mixed-methods approach. On one hand, parliamentary documentation from the HoP and UK devolved administrations, figures and statistics on the EWS made public through the EC and other institutions are taken into consideration. On the other hand, to enable the better triangulation of results, the discussion utilises novel interview data from HoP members and staff to gain a deeper insight into administrative and behavioural change (Appendix). The article specifically focuses on the period between the Treaty of Lisbon entering force and the Brexit referendum (23 June 2016). This is because the role of the EWS within the HoP became marginal after the referendum on EU membership (House of Commons 2017: Ch. 3). This significantly limited the interest of, and contributions made by contacted potential interviewees to the research project regarding developments after 2016. Furthermore, as the exploration of this matter is beyond the scope of this article, it considers HoP approaches to the mechanism of Political Dialogue, a participatory mechanism linking the EC and NPs (Rasmussen and Dionigi 2018), only from a contextual perspective.

Results demonstrate that the EWS only had a limited range of effects on the EU scrutiny frameworks of the HoP. To a large extent, this is due to the pre-existing systemic approach of the HoP to European scrutiny (House of Lords 2013b; House of Commons 2015a). Therefore, the EWS was integrated into HoP working procedures as a bolt-on, without an increase in the scope of and resources invested in EU scrutiny. Although reasoned opinions were subjected to expedited parliamentary procedures, administrative adaptation to the EWS did not change the general speed of EU scrutiny processes within the HoP. Although the House of Commons made large use of the mechanism compared to other NPs, this might be mostly due to a spike in the numbers of Eurosceptic MPs after the 2010 general election. This is in line with previous findings regarding the intervening effect of Euroscepticism on the EWS (Huysmans 2019). At the same time, the House of Lords perceived the EWS as a primarily legalistic mechanism and preferred the use of the Political Dialogue to contribute to EU policymaking in an upstream manner. For this reason, the chamber runs counter to theoretical expectations on bicameral legislatures and the EWS (Huysmans 2019), as in the case of the HoP, the lower chamber was the primary utiliser of the EWS.

Furthermore, the EWS had little impact on interparliamentary networks of the HoP. This also applies to cooperation between the HoP and the UK's devolved legislatures. No formal cooperation structures were created to accommodate cooperation on the EWS between the HoP and these legislatures. Given the lack of these links and reliance on the HoP to take up these initiatives, only Wales issued reasoned opinions through the EWS (Högenauer 2017: Table 12.1). There is also little evidence of an increase in networking between UK devolved legislatures and (sub)national NPs. However, the EWS did encourage the mainstreaming and reinforcement of EU scrutiny processes in the case of Scottish and Welsh legislatures. Going forward, this might also serve as the basis of EU scrutiny as an independent state in the case of Scotland. Lastly, developments around and after the UK's decision to leave the EU in 2016 (European Council 2016; European Commission 2017b), also demonstrate that meanwhile the EWS represented a significant development regarding the formal empowerment of NPs within the context of the EU, the debate on subsidiarity and NP participation in EU affairs is moving beyond the remits of the EWS.

The structure of this article is as follows. The first section describes and contextualises the EWS in wider debates on NP participation in EU affairs. The second section outlines the methodological approach of the article, which builds on theoretical insights relating to administrative and behavioural change observed within other NPs EWS adaptation processes and utilisation. The third and fourth section undertakes the analysis on this basis, focusing on formal administrative change, the speed and scope of and resources invested in EU scrutiny, differences between the lower and upper chambers as well as

inter-parliamentary relations. The article also discusses the implications of the EWS for UK devolved administrations in this context. At the end, the conclusions are presented.

## LITERATURE REVIEW

Since the Treaty of Lisbon created the EWS, national parliaments (each with two 'votes', which are divided to one per chamber in the case of bicameral legislatures) can pass 'reasoned opinions'. These can concern draft legislative acts in areas of shared competence that might violate the principle of subsidiarity. If more than one third (one quarter regarding justice and home affairs legislation) of NPs issues such an opinion, a 'yellow card' is triggered, and the European Commission must review the draft act. If the majority of NPs issue reasoned opinion regarding a draft, an 'orange card' is triggered, enabling the Council of the EU and the European Parliament to block the proposal with majority voting. (European Union 2007: Protocol 2; Article 7 and 7(2)). Therefore, the EWS provides national parliaments with a tool to influence EU policymaking processes directly. This represents a departure from the traditional model of EU affairs within NPs, which primarily conceptualises legislative involvement through indirect influence, exerted through the scrutiny of the executive (Groen and Christiansen 2015: 45).

The inclusion of NPs into EU decision-making through empowering them to police the principle of subsidiarity emerged as a solution that promises to resolve two persisting issues concerning the relationship of NPs and the EU. First, the increasing use of qualified majority voting (QMV) within the Council of the EU, opaque decision-making procedures, and the lack of access to EU-related information reduced NP's influence over policy areas which are delegated to the EU level. This can be categorised as a process of ongoing 'de-parliamentarization' (Rozenberg and Heffler 2015: 1; Norton 1996; Kassim 2005; Kaczyński 2011; Granat 2018) within the EU. In this context, the EWS is designed to compensate NPs for their loss of competences by entrusting them to uphold the very principle which aims to protect them from unrequired loss of competence in the coming years (Rittberger 2007: 192). Second, a subsidiarity monitoring mechanism of this nature fills an implementation gap regarding subsidiarity without having to create a new institution for NPs within the EU. This approach also upholds the principle of separation between levels of EU multi-level governance at the same time (Groen and Christiansen 2015: 52-54).

Early assessments of the mechanism were sceptical about the actual effect it can have on the involvement of NPs in the EU. Some argued that the EWS did not remedy already existing problems of NPs regarding engagement with European affairs. The low salience of subsidiarity examinations amongst citizens and the high level of resources required to engage in extensive screening of draft EU legislation might make the use of the EWS unattractive (Raunio 2010: 10). Furthermore, NPs and their respective national political structures are strongly interconnected. As a result, adaptation to the EWS is highly likely to produce highly heterogeneous outcomes across the NPs taking on duties relating to the mechanism. As the EC pre-emptively examines its own draft legislative proposals from a subsidiarity perspective anyway (European Union 2007: Protocol No. 2; Article 5), others argued that the number of issues which might entail concerns about the breach of subsidiarity principle is likely to be low (Fraga 2006). Lastly, if a yellow or orange card procedure is triggered, it is highly likely that the proposal would not pass in the Council anyway as NPs can exert pressure on their respective governments to act against it (Raunio 2010: 10).

However, as the EWS entered into force through the Treaty of Lisbon, assessments of its utilisation suggest that the mechanism produces effects within the governance structures of the EU. Indeed, the yellow card procedure was only triggered three times since the Treaty of Lisbon entered into force and the orange card procedure remains unutilised (European Commission 2019a). Nevertheless, the EWS can incentivise cooperation

amongst NPs on policy issues and it shapes change within affected legislative drafts (Fromage 2016; Cooper 2015). The mechanism also seems to play a significant informational role, as reasoned opinions help the European Commission in assessing support for legislative proposals at the early stages of the decision-making process (van Gruisen and Huysmans 2020). Also, NPs with minority governments can make use of the EWS to represent their stance on the European policymaking process whilst bypassing their executives (van Gruisen and Huysmans 2020). A wide range of studies also consider *why* the mechanism is used, suggesting factors ranging from Euroscepticism to differences between lower and upper chambers (Williams 2016; van Gruisen and Huysmans 2020; Huysmans 2019; Gattermann and Heftler 2015). These also led to behavioural changes amongst parliamentarians, such as through increasing their interest in conducting EU scrutiny in general (Viola 2019; Miklin 2017). It is a mechanism with a legal and political importance, which has led to observable impacts both on NPs and the EU decision-making process.

Before the 2016 Brexit vote, the UK HoP were leading advocates for the creation of a subsidiarity-related mechanism for decades (Wintour 2003; Huff and Smith 2015: 323). Furthermore, the UK legislature was amongst the first NPs to issue reasoned opinions at times where EWS-related coordination amongst legislatures led to change in proposed legislation (Pintz 2015). Indeed, it was one of the most prolific users of the mechanism after its introduction (Malang et al. 2017: Table I.), as the Houses produced a combined 24 reasoned opinions (on 18 legislative drafts) between 2010 and 2016 (House of Lords 2019; House of Commons 2019). As a result, studies on the EWS and the UK HoP touch on categorising the legislature's approach to using the EWS (Cooper 2016: 18, 21-22), consider the impact of the EWS on the relationship between the HoP and devolved parliaments (Borońska-Hryniewiecka 2017: 155-156) as well as discuss the utilisation of the mechanism within the Houses (Huff and Smith 2015: 322).

Indeed, Brexit radically reshaped the context of these discussions and the Houses of Parliament are now outside the 'European parliamentary space' created by the Treaties (Cygan et al. 2020: 1610). However, the closer examination of the UK EWS experience still provides valuable insights for both UK and EU stakeholders. On one hand, adaptation to the EWS constitutes one of the largest changes to the UK's EU scrutiny systems before the Brexit vote. As the HoP and the UK's devolved legislatures embark on further changes to these structures after the country's withdrawal, the post-EWS HoP scrutiny frameworks serve as the basis for future development (Cygan et al. 2020). In addition, although studies considered the effect of the EWS on UK subnational legislatures (Högenauer 2019, 2017; Borońska-Hryniewiecka 2017), they do not discuss associated administrative adaptation in depth or expand on the implications of these developments regarding the post-Brexit era. Furthermore, existing literature could be augmented by taking policymaker and staff perceptions into account when considering the intervening effects of the EWS within the HoP. Insights of this nature could shed light on behavioural change, learning processes and other indirect effects which exert their effects in the HoP even as the UK leaves the EU (Miklin 2017). Lastly, and regardless of Brexit, the UK's EWS experience can also provide clues regarding alternative ways to promote cooperation and incentivise legislative participation within EU decision-making processes.

## **THEORETICAL FRAMEWORK**

The article investigates administrative and behavioural changes within the HoP that are associated with the introduction of the EWS. In this manner, the article reviews debates, processes, and decisions which preceded and facilitated the integration of the EWS into the working procedures of the Houses as well as data on the utilisation of the EWS within the Houses. This information is contrasted against contextual information on matters such as pre-Lisbon EU practices of EU scrutiny and developments in the scope and speed of, and resources invested in associated scrutiny processes. In this context, the ways MPs

and Lords perceive their own role in the scrutiny of EU legislation within the Houses are considered as explanatory factors. This is facilitated by the utilisation of interview data from HoP stakeholders (Appendix). This is due to the fact institutions interpret their competences and roles in the light of what is expected from them. As a result, a shift in underlying norms regulating these expectations could change institutional behaviour as well (March and Olsen 2009: 1-2; Hall and Taylor 1994: 949). For example, as the Treaty of Lisbon created an obligation to 'contribute actively to the good functioning of the Union' for NPs (European Union 2007: Article 12), some legislatures across the EU used the adaptation to the EWS as means to widen their general scrutiny of EU policymaking (Viola 2019; Miklin 2017). Furthermore, the introduction of the EWS enabled MPs across the European Union (EU) to have constant, direct and systemic access to information about EU decision-making processes (European Union 2007: Protocol No. 2; Article 3 and 4). This change could lead to institutional learning, as the 'information pool' that informs the preferences and goals of a given actor expands (Hartlapp 2009: 2-3; paraphrasing Hecl 1974). As a result, new information about EU decision-making might encourage NPs to use their pre-Lisbon competences more extensively (Miklin 2017: 371). Therefore, the article expects that the EWS increased the speed and scope of, and resources invested in EU scrutiny processes within the HoP (Miklin 2017).

Assessing the UK HoP's administrative and behavioural adaptation of the EWS allows also for evaluating assumptions which relate to the EWS and EU scrutiny within legislatures. For example, the bicameral nature of the HoP provides an opportunity to examine claims such as that upper chambers tend to utilise the EWS more frequently compared to lower chambers or that Euroscepticism contributes to the higher use of the EWS (Williams 2016; Huysmans 2019). Adaptation to the EWS might have also increased the number of HoP interactions and networks with other NPs, including subnational legislatures (Pintz 2015; Fromage 2016; Cooper 2015). Therefore, the article investigates communication and coordination between other NPs and the UK HoP to evaluate this expectation. To account for the wider potential effect of the EWS within the system of multi-level governance of the UK, the article also examines HoP documentation as well as regional administrations such as Wales, Scotland, and Northern Ireland. In this manner, the article expects that devolved legislatures developed their internal capacities as well as their engagement with the HoP and other (sub)national parliaments due to EWS adaptation. Lastly, the findings of this article could also provide clues about the future of EU scrutiny within the HoP and EU NPs in a post-Brexit context.

## **THE HOUSES OF PARLIAMENT AND THE EWS: EFFECT ON GENERAL ENGAGEMENT WITH EU ISSUES**

Within both Houses of Parliament, the introduction of the EWS resulted in very modest procedural changes to the way EU documents are scrutinised. This is due to the practice of systemic and substantive scrutiny of EU documents in both legislative chambers, which was already in place before the Treaty of Lisbon in 2009. Scrutiny procedures take place within both Houses, although EU-related cooperation takes place between the two legislative chambers (Huff and Smith 2015: 321, IntHoC01, IntHoL03) the European Scrutiny Committee (ESC) of the House of Commons and the European Union Select Committee of the House of Lords operate independently from each other (House of Lords 2019; House of Commons 2019). Due to the wide-ranging definition of 'EU documents' within the Standing Orders of the HoP, more than 1,000 EU-related documents are examined by the Houses each year. Thus, the scrutiny of EU documents forms an important part of parliamentary activity in both legislative chambers (House of Lords 2013b: 9; House of Commons 2015a: 9).

Furthermore, the EU scrutiny procedure is reinforced by the government practice of transferring Explanatory Memorandums regarding every EU document examined by the Houses, providing a wide set of information on which the scrutiny process can build on

(Huff and Smith 2015: 315). Importantly, the mechanism of 'scrutiny reserve' (which mandates that the government is not able to take a decision before the scrutiny of a given document is completed) also provides an important incentive for MPs and Lords to take EU scrutiny-related activities seriously (House of Lords 2013b: 15; House of Commons 2015a: 38-39). Indeed, government ministers (especially within the policy area of foreign affairs and security) regularly disregard the scrutiny reserve. However, the UK government must provide an explanation to MPs and Lords in these cases (Munro 2016; House of Lords 2013b: 15). In other words, scrutiny of EU policy within the HoP was a systemic element of their policymaking role even before the introduction of the EWS.

The HoP examined the future role and potential of the EWS in conjunction to the drafting and ratification process of the Treaty of Lisbon. Concerns regarding thresholds associated with activating certain 'cards', the relative scarcity of subsidiarity-related problems in draft EU legislation as well as the preventive nature and limited scope of the mechanism led to conclusions forecasting the low importance of EWS within the operation of the Houses (House of Lords 2008: 244-245; House of Commons 2007: 13, 22-23). Furthermore, the principle of parliamentary sovereignty came into direct conflict with the duty of NPs to contribute to the 'good functioning of the EU'. For example, the House of Commons European Scrutiny Committee argued that '[NP involvement in EU affairs is a matter of] of entitlement, not obligation' (2007: 23). This goes in line with the general 'reactive' approach of the House of Commons to the scrutiny of EU legislation, which started to take shape soon after the accession of the UK to the EU (Cygan 2007). For example, scrutiny processes only commence within the House of Commons after the draft legislation was finalised by the EC and only if the ESC deems that an EU document constitutes of 'political or legal importance' (House of Commons 2015a: 12). In this sense, the role expectation on the Commons regarding EU scrutiny is to reactively assess the executive's leadership on draft European legislation.

On this basis, the UK government pressed for changes to the draft treaty, resulting in the removal of the word 'shall' from treaty sections referring to national parliaments (with a few minor exceptions), making the proposed obligation non-enforceable in the EU court system (House of Lords 2008: 244). In any case, pre-Lisbon engagements of the HoP with the EWS and other NP-related treaty changes framed them as developments with little utility for the pre-existing scrutiny structures of the Houses. Furthermore, these assessments repudiated the notion that these changes would shift the current role and way the Houses contribute to and scrutinise EU policy: as a House of Lords report put it, '[the EWS] should not distract attention from scrutiny of policy' (2008: 245). Therefore, the Houses resisted shifting their scrutiny profiles in a more proactive direction in line with the general aim of Lisbon. At the same time, the EWS was conceptualised as a low impact mechanism that is nevertheless complimentary with pre-existing approaches to EU scrutiny within the Houses.

Subsequently, the EWS was integrated into pre-existing procedures as a bolt-on. Administrative staff in the House of Commons and House of Lords engage in the pre-screening of all received EU documents and make recommendations to their Scrutiny Committees regarding the extent to which scrutiny should be undertaken (Huff and Smith 2015: 320). In this context, checking subsidiarity-related concerns is just another angle of examination for the staff supporting the scrutiny committees (IntHoC01; IntHoL01; IntHoL02; IntHoL03). As one of the interviewees put it, 'the Committee already scrutinised all [EU] documents and reported on the most important – those subject to [the] yellow card procedure are by definition important' (IntHoC01). Concurrently, interviewees reported no increase in resources or staff due to EWS-related duties or responsibilities (IntHoC01; IntHoL03; IntHoL04), despite the manner reasoned opinions are written within both chambers. These documents 'assumed no prior knowledge' about the legislation on hand (which is not the case within some other NPs, such as the Swedish Riksdag), which increased the comparative workload required for the completion of a reasoned opinion (IntHoL04). Nevertheless, given the reactive nature of the EWS (the 'burglar alarm' of

subsidiarity: IntHoC02), decision-makers, especially beyond the membership of the respective EU scrutiny committees of the Houses, had a very limited range of regular and focused engagement with the mechanism. This had an impact on the associated plenary debates as well. These were usually short, pointing to the overall low salience of the mechanism within the Houses (Huff and Smith 2015: 322).

This phenomenon significantly impeded the potential effect of the EWS on the role expectations felt by decision-makers within the HoP. Mandated by the Treaty of Lisbon, the European Commission engages in in-house subsidiarity checks parallel to the existence of the EWS, reducing the scope of proposals that would qualify for a violation of the subsidiarity principle (Fraga 2006). Furthermore, the number of legislative proposals proceeding through the EU institutional framework shrunk significantly after 2010. Likely influenced by the entrenchment and progress of the EU's Better Regulation Agenda, between 2010 and 2016, the average number of new legislative proposals was 127, less than half for the period between 2003 and 2009 (European Parliament 2017: 26). In other words, the introduction of the mechanism that primarily aimed to reduce the overreach of EU legislation coincided with a time when the quantity of EU legislation was shrinking in any case. This phenomenon contributed to an understanding amongst members of the HoP that the mechanism as such is 'useless'. This perception was prevalent especially within the House of Commons, where EU affairs are much more politicised compared to the non-elected Lords (IntHoC02; IntHoL04).

Nevertheless, empirical evidence demonstrates a sharp increase in the number of EU documents referred to debate at the plenary of the House of Commons after 2010 (Munro 2016). However, it is shaped by the generally increasing salience of the EU within the domestic political context of the UK during the past decade (Lynch and Whitaker 2013) rather than the introduction of the EWS. This increase of political salience was accompanied and amplified by the increasing number of Eurosceptic, primarily Conservative Party, MPs within the European Scrutiny Committee of the House of Commons after the 2010 general election (IntHoC02; IntHoL02; IntHoL03; Munro 2016; Huff and Smith 2015: 314). The large presence of Eurosceptic decision-makers within a legislature increases the level of EU-related scrutiny compared to other legislatures where the contestation of EU integration is low (Gattermann and Heffler 2015). This finding concurs with previous research confirming Eurosceptic parliaments tend to issue more reasoned opinions (Huysmans 2019). In this context, it is unlikely that the uptake in debated EU documents was due to a redefinition (and expansion) of what is considered matters of 'political or legal importance' (House of Commons 2015a: 12) and thus deserving of more extensive scrutiny-related processes. Rather, it is likely that this effect was driven by an increase of demand for additional parliamentary opportunities to communicate general viewpoints about European integration.

The adaptation of the House of Lords to the EWS was extensively conditioned by factors stemming from its unique institutional setup besides the previously discussed issues of adaptation. Articulated through the extensive sub-committee system with 'specific policy remits' supporting the scrutiny of EU documents (House of Lords 2013b: 5), the House of Lords 'take ... a longitudinal interest in the overall direction of EU policy' (Huff and Smith 2015: 323). This more upstream and less reactive approach to EU scrutiny was the main direction of the Lords regarding EU documents since the accession of the UK to the European project (Cygan 2007) and serves complimentary to the more reactive approach of the Commons. The unelected nature of the upper house underpins this approach by reducing demand (and attention paid to) political messaging conducted via the legislative scrutiny of EU legislation within the chamber (IntHoC02; IntHoL03; IntHoL04). Thus, the EWS does not offer an incentive to increase engagement in the context of EU scrutiny within the House of Lords, which utilised the EWS through a 'much more legalistic approach' compared to the relatively more politicised House of Commons (IntHoC02; IntHoL04). As one of the interviewees working in the Commons put it, 'when the Lords

thinks there's a [subsidiarity-related] problem, it is certain that the Commons will agree. However, this is not necessarily true the other way around' (IntHoC2).

Correspondingly, the overall awareness and interest amongst the members of the House of Lords regarding the reasoned opinion procedure was low as well. As one member of the House of Lords put it, 'there was virtually no knowledge of, or interest in [the] EWS in the House of Lords' (IntHoL02), despite the higher overall interest in EU affairs as such within the chamber compared to the House of Commons. This phenomenon explains why the House of Commons passed significantly more reasoned opinions between 2010 and 2016 compared to the activity of the House of Lords (House of Lords 2019; House of Commons 2019). Interestingly, this phenomenon runs counter to findings which identify upper chambers as more likelier issuers of reasoned opinions compared to lower chambers (Williams 2016; Huysmans 2019). In the case of the House of Lords, this might be explained by a mismatch between the self-perceived scrutiny role of the Lords and the opportunities offered by the EWS. Meanwhile the Lords were primarily interested in shaping policy in an upstream manner, subsidiarity checks were perceived as scarce and reactive opportunities to shape EU legislation within the chamber.

### **THE HOUSES OF PARLIAMENT AND THE EWS: EFFECTS BEYOND SAFEGUARDING THE PRINCIPLE OF SUBSIDIARITY**

After considering the effect of the EWS on the general engagement with EU issues within the HoP, the question emerges: did the adaptation of the EWS induce administrative or behavioural change beyond the realm of subsidiarity issues? To explore this question, the following paragraphs discuss the general effects of the EWS on the utilisation of EU scrutiny structures and opportunities within the HoP. In this context, the impact of the reasoned opinion procedure on inter-parliamentary cooperation with other NPs and UK devolved legislatures are considered, alongside the effect of HoP contributions to wider discourses about NP participation in EU decision-making.

Due to the high salience of EU affairs within the domestic politics of the UK, both Houses were interested in influencing EU policy beyond policing the principle of subsidiarity (House of Lords 2013a; House of Commons 2013). However, changes in terms of learning and information flows due to the EWS were minimal within the Houses. Given the extensive and substantive nature of pre-Lisbon EU scrutiny in both Houses, the EWS did not create an incentive for MPs and Lords to re-evaluate the nature and functioning own scrutiny systems. Correspondingly, the post-Lisbon introduction of direct, systemic flow of information about draft EU legislation from EU institutions had a limited effect on the information pool of the Houses. Even in the pre-Lisbon period, the Houses already received all draft EU legislation and related Explanatory Memorandums from the government (House of Lords 2013b: 8; House of Commons 2015a: 14-16). Furthermore, the Houses have the competence to request further information from the government if necessary (House of Lords 2013b: 8; House of Commons 2015a: 14-16). In any case, evidence from interviews suggest that the introduction of the EWS did result in some changes regarding the speed of the scrutiny process. For example, the government provided information to the Houses much sooner in the case of documents subject to subsidiarity checks compared to other scrutiny procedures. These changes resulted from the Houses putting pressure on the government after initial experiences with the EWS. The lack of timely input from the executive led to the House of Commons running out of the eight-week time limit allowed to draft a given reasoned opinion at least on one occasion (IntHoC01; IntHoL01). Reasoned opinions were scheduled on the agenda of the plenary more promptly than other documents (IntHoC01; IntHoL01). Nevertheless, interviewees did not mention any additional scrutiny processes which commence due to (or after the assessment of) a subsidiarity-related concern (IntHoC01; IntHoL01).

Indeed, the House of Commons did pass reasoned opinions that were potentially motivated by concerns beyond the principle of subsidiarity (IntHoL03). Given the more political rather than legal approach of the House of Commons to the EWS, the mechanism was utilised primarily to express wider concerns with or wider support of EU legislation and to pursue them publicly within the chamber (IntHoC02; IntHoL03). Considering the relative role of the EWS within the House of Commons scrutiny process and acrimonious debates about the membership of the UK within the EU, it is unlikely that these concerns emerged due to the intervening effect of information flows initiated by EWS-related processes. In the case of the House of Lords, attempts to influence EU decision-making substantively and beyond the scope of subsidiarity concerns primarily took place through the Political Dialogue. A mechanism initiated by the Barroso Commission in 2006, it serves as a way for NPs to 'issue opinions on Commission documents or policy areas' (Rasmussen and Dionigi 2018; European Commission 2019b), in line with the interest of the House of Lords to influence the general direction of EU policy in an upstream, more proactive manner. Thus, while the House of Lords only issued an average 1.16 reasoned opinions per year between 2010 and 2016, the corresponding figure regarding the Political Dialogue is 15.8 (Huff and Smith 2015: 322-323; European Commission 2017a, 2016, 2015).

The limited overall effect of the EWS on the Houses is also observable in the field of inter-parliamentary cooperation as well. Indeed, the Houses were active working together with other NPs through joint letters to the European Commission and the Conference of Parliamentary Committees for Union Affairs (COSAC) in the post-Lisbon period (Huff and Smith 2015: 323; COSAC 2012). Furthermore, EWS-related staff level communications with other NPs made the work undertaken by representatives of the Houses in Brussels more prominent within the EU scrutiny processes of the HoP (IntHoC02; IntHoL03; IntHoL04). Nevertheless, interviews suggest that this phenomenon is not due to the EWS. As an interviewee from the House of Lords put it, inter-parliamentary cooperation before Lisbon was 'already seen as important and pursued ... when our work overlapped' (IntHoL01). Although the introduction of the EWS increased the use of the already existing Interparliamentary EU Information Exchange (IPEX), which was upgraded to accommodate information on reasoned opinions, this did not necessitate the use of further resources or the establishment of new networks. Correspondingly, interviewees within the Houses reported no new contacts or information exchange practices on the political level emerging due to the EWS (IntHoC01; IntHoL01).

Nevertheless, the introduction of the EWS did introduce modest change regarding the engagement of devolved legislatures with EU legislation. Although discussions around subsidiarity monitoring evaluated directly involving subnational parliaments, this did not become possible until the Treaty of Lisbon (Högenauer 2019: 194; Granat 2018). Nevertheless, no formal procedure was put in place to coordinate and facilitate EWS-related discussions between devolved legislatures and the Houses after 2009 (Borońska-Hryniewiecka 2017: 155). Furthermore, as the potential views of devolved legislatures are only passed on to the EU level if a reasoned opinion is passed about the matter by the Houses, the direct effect of the EWS on the EU policy influence of the UK's regional legislatures is negligible (Borońska-Hryniewiecka 2017: 156). However, as the Treaty of Lisbon mandates NPs 'to consult, where appropriate, regional parliaments with legislative powers' regarding the matter of subsidiarity (European Union 2007: Protocol No. 2; Article 6), the Houses indicated their openness to the input of devolved legislatures regarding reasoned opinions (House of Commons 2008: 14). However, this led to very little direct engagement with the EWS amongst UK devolved legislatures. Only Wales passed reasoned opinions on subsidiarity between 2010 and 2016 (Högenauer 2019: 201-204), suggesting that being reliant on the HoP to exercise this power made its utilisation generally unattractive for UK subnational parliaments. The lack of reasoned opinions from these sources also suggests that the EWS had little effect on the formation of additional networks between UK devolved legislatures and other (sub)national parliaments.

In any case, the Scottish Parliament and the Welsh Assembly implemented reforms to accommodate for and utilise the additional flow of information requiring attention from them. This took shape in the form of appointing specialised liaison personnel to undertake associated duties and the mainstreaming of European affairs amongst committees (Scottish Parliament 2010; Högenauer 2017) as well as the development of specialised and systemic parliamentary processes for subsidiarity monitoring (Welsh Assembly Research Service 2015). At the same time, the Northern Ireland Assembly experienced no change in relation to the mechanism, given the Northern Ireland Executive's reluctance to increase EU-related communications with the Assembly (Borońska-Hryniewiecka 2017: 156). Although the exploration of the matter beyond the scope of this discussion, it is likely that this was accompanied by learning effects within devolved legislatures which decided to expand EU scrutiny activities due to their increased information pool. In the case of Scotland, such adaptations could also serve as the nucleus of legislative EU scrutiny as a member state in the potential case of eventual independence.

The EWS also influenced how the Houses conceptualise the way they would like to extend NP participation in the multi-level system of governance within the EU. Blueprints and discussions within the House of Commons contributed to EU-level talks about creating a subsidiarity-related mechanism for NPs as early as 2003 (Wintour 2003). The EWS and its future was also subject to European Scrutiny Committee inquiries (House of Commons 2015b) and was discussed in a wider House of Lords report on the present and future of NP participation in EU affairs (House of Lords 2013a). The House of Lords was extensively involved in developing and advocating for the idea of a 'green' or 'red card' for NPs (IntHoL02). The implementation of the former idea would see NPs gain the competence to propose or amend EU legislation, whilst the latter would enable NPs blocking a draft EU legislative proposal (Gostyńska-Jakubowska 2016: 5). These proposals represent the enduring influence of the existing voting framework principle of the EWS within wider thinking about legislative empowerment in the context of EU integration.

However, both ideas encountered serious obstacles. On one hand, it is true that the idea of the red card gained political salience on the EU level, as conclusions of the re-negotiation of UK EU membership included provisions for such a mechanism (European Council 2016: 17). However, the idea (and its promotion) was fundamentally tied to Prime Minister David Cameron's attempt to conduct successful re-negotiations with the EU concerning the UK's membership before the referendum (IntHoC02; IntHoL04). In this context, the idea of the red card was primarily underpinning the publicity drive that the Prime Minister and government MPs has achieved something substantial during the re-negotiations (Hagemann et al. 2016). On the other hand, the idea of a 'green card' attracted extensive discussions and associated initiatives, despite that introducing such a mechanism would require treaty change (European Commission 2017b: 12). The House of Lords Select Committee proposed the idea within their report on NP participation within EU affairs (House of Lords 2013a) and became one of the biggest proponents of the proposal alongside the Dutch and Danish NPs (IntHoL04). However, subsequent attempts to build on these outcomes were not able to attract widespread support due to persisting coordination problems and the EC's reluctance to fully engage with the process (IntHoL04). Although the exploration of this matter is beyond the scope of this article, interviews suggest that another factor at play around the lacklustre progress of the 'green card' concept is that the debate is moving in a new direction. Following the publication of the Report of the Task Force on Subsidiarity, Proportionality and 'Doing Less More Efficiently' (an evaluation of the EWS initiated by the Juncker Commission: European Commission 2017b), the focus of NPs is turning towards improved, personal, and early-stage interactions with the EC rather than devising new formal systems of interactions (IntHoC02; IntHoL04).

## CONCLUSION

This article examined administrative and behavioural change within the HoP in relation to the EWS through a mixed-methods approach. By complementing document analysis with novel interview data, the article provided a comprehensive overview of how the EWS was integrated into the working procedures of the Houses. In addition, this approach allowed for evaluating expectations which relate to behavioural aspects of adaptation to the EWS. In this manner, the article considered whether EWS-related adaptation led to an increase in the speed and scope of or resources invested in EU scrutiny within the HoP (Miklin 2017). The article also examined expectations stemming from previous research on the EWS, such as that upper chambers tend to make more use of the EWS, that Eurosceptic MPs tend to increase the use of the EWS (Huysmans 2019) and that the EWS encouraged further networking amongst NPs (Pintz 2015; Cooper 2015). The article also discussed administrative change within the three devolved legislatures of the UK and examined if it led to the further development of their capacity to conduct EU scrutiny. Lastly, the article discussed the UK and the EU's perspective before the 2016 referendum on the future of the mechanism.

Overall, the introduction of the EWS did not change the already systemic and substantive nature of EU scrutiny within the Houses. Indeed, the EWS has expedited the parliamentary passage of some EU scrutiny documents, given the short eight-week deadline associated with the mechanism. Nevertheless, administrative adaptation to the EWS did not widen the scope of HoP scrutiny activities. Associated changes also did not result in more resources being dedicated to undertaking the scrutiny of EU legislation or extend the interparliamentary networks of the HoP. These chambers seamlessly integrated the mechanism into their pre-existing scrutiny structures by primarily following the logic of their own political and organisational attributes and priorities. In terms of legislative behaviour on the EWS, the House of Commons primarily used the EWS to voice the wider concerns regarding draft EU legislation and to conduct associated political messaging. Interviews and parliamentary documentation suggest that this phenomenon is significantly shaped by an increase in Eurosceptic MPs within the House of Commons after 2010. This concurs with the expectation that such an increase in NPs is usually accompanied by an increase in the number of reasoned opinions issued (Huysmans 2019). At the same time, the House of Lords largely saw it as another, but mostly ineffective, tool to pursue dialogue with EU institutions concerning substantive EU policy issues. The experience of the House of Lords diverges from trends observed in other NPs. As the EWS was not perceived to be suitable for upstream policy work within the Lords, it issued less reasoned opinions than the House of Commons, contrary to theoretical expectations (Huysmans 2019). In any case, the mechanism was utilised infrequently. To some extent, this is due to the emergence of the EC's Better Regulation Agenda, which significantly reduced the overall number of legislative proposals within the EU decision-making structures.

The mechanism also increased the access of UK subnational legislatures to information on EU policy. This resulted in administrative reforms which increased legislative attention paid to EU affairs in the case of Wales and Scotland. However, these developments did not materialise in increased engagement between the UK HoP and devolved legislatures regarding EU policy or, apart from the case of Wales, result in the issuance of subnational reasoned opinions. This experience exemplifies the high level of discretion commanded by the UK government and the HoP to shape the extent to which coordination and power-sharing takes place between the central government and devolved administrations. This matter that will become increasingly salient as the UK repatriates (and potentially redistributes) EU competences after Brexit. Furthermore, these findings suggest that the EWS had little intervening impact on networking between UK devolved legislatures and other (sub)national legislatures. Nevertheless, the legislatures of Wales and Scotland increased and mainstreamed their EU scrutiny activities to accommodate EWS-related information streams. Going forward, this phenomenon could be very important for a

potentially independent Scotland, as these structures could serve as the basis of developing structures of EU scrutiny as an independent EU member state.

Brexit provides a chance of renewal for the HoP in terms of monitoring and scrutinising EU legislation as well as the activities of the UK executive regarding the UK-EU relationship. Nevertheless, results demonstrate that a focus on reactive scrutiny of executive leadership remains the primary focus of the HoP in EU affairs, especially in the Commons. In turn, this phenomenon might potentially further retrench and reinforce executive dominance and power over the UK's relationship with the EU in the future. In the context of the European parliamentary space, these findings highlight the necessity and difficulty of developing effective participatory strategies for NPs within the complex structures of European multi-level governance. For example, the way in which the Houses refused to interpret or accept the EWS as a legal *obligation* underlines the importance of finding ways through which all NPs can strengthen their respective scrutiny profiles. In any case, political dialogue amongst EU institutions, governments, and NPs themselves about the EWS experience and the future of legislative empowerment in the context of EU integration continues. The salience of NP participation in EU decision-making is here to stay.

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