

# Euroscepticism and the Early Warning System\*

MARTIJN HUYSMANS<sup>1,2</sup> 

<sup>1</sup>School of Economics, Faculty of Law, Economics & Governance, Utrecht University <sup>2</sup>LICOS Centre for Institutions and Economic Performance, Faculty of Economics and Business, KU Leuven, Leuven

## Abstract

With the Treaty of Lisbon, national Parliaments obtained a direct role in the legislative process of the European Union (EU). When the Commission releases a legislative proposal, each national Parliament has eight weeks to issue a Reasoned Opinion stating that the draft violates the EU principle of subsidiarity if they wish to do so. This article provides context on this so-called Early Warning System (EWS), and then studies empirically when national Parliaments issue Reasoned Opinions under the EWS. A within-between panel regression covering all 28 EU countries for 2010–16 leads to novel findings on the issuance of Reasoned Opinions. In particular, there is no robust statistical evidence that variations in public attitudinal euroscepticism in a country affect the number of Reasoned Opinions issued by its Parliament. In contrast, electoral euroscepticism as measured by the election of eurosceptic Parliaments is found to have a strongly significant across-country effect on the number of Reasoned Opinions.

**Keywords:** subsidiarity; Early Warning System; division of competences; euroscepticism

## Introduction

Subsidiarity is a fundamental principle in the division of competences between the European Union (EU) and its member states. While it is a somewhat ambiguous concept open to interpretation and politicization (Begg *et al.*, 1993; Føllesdal, 1998; Van Hecke, 2003; Van Kersbergen and Verbeek, 2007), its definition in Article 5(3) of the Treaty on European Union implies that political action should be left to the member states unless action at the EU level would be more effective.<sup>1</sup> When the ratification of the Maastricht Treaty proved difficult because of scepticism over increased centralization, the inclusion of subsidiarity was one of its selling points (Cass, 1992; Pollack, 2000; Swenden, 2004).

When considering federal countries and (quasi-)federal systems such as the EU, economic theory on the size of nations suggests that the central level should only be responsible for policy areas with high economies of scale and low heterogeneity of preferences (Alesina and Spolaore, 1997; Tullock, 1969). In light of this logic, the EU seems to be both relatively active in areas with low economies of scale – where perhaps it should not be – such as agriculture, but also relatively inactive in areas with high economies of scale – where it actually should be – such as defence (Alesina *et al.*, 2005). While the former problem could be dubbed excessive centralization, the latter could be qualified

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<sup>1</sup>The Article reads ‘the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States’. It is reproduced in its entirety in the online Appendix.

as failed collective action (Olson, 1974). This article focuses on the EU doctrine of subsidiarity and specifically the Early Warning System as a means to address the first problem.

The risk of excessive centralization is discussed extensively in the broader literature on federalism beyond the EU (see, for example, Bednar, 2011; Vaubel, 1996). To protect against it, safeguards may be put in place such as establishing a parliamentary chamber in which each of the constituent parts of the federation is represented. Examples of such upper chambers include the United States Senate or the German Bundesrat. In the EU, the Council fulfills this role, since all member state governments are represented there.

With the Treaty of Lisbon, national Parliaments obtained a right to review the Commission's proposals in the light of the principle of subsidiarity. If they feel a proposal violates the principle, they can send a Reasoned Opinion to the Commission. Because this review happens at the initial stages of legislation, the procedure is called the Early Warning System (EWS). The direct involvement of national Parliaments on top of national governments can be seen as a further safeguard against excessive centralization.

This article presents novel findings regarding when national Parliaments issue Reasoned Opinions under the EWS. In particular, it shows that while eurosceptic Parliaments are significantly more likely to issue Reasoned Opinions, Parliaments do not respond in a statistically significant way to fluctuations in public euroscepticism. Stated differently, only where eurosceptic voters actually elect eurosceptic parliamentarians does one see robustly more Reasoned Opinions.

Compared to the existing literature, the present study also extends the timeframe by two years to 2010–16, and the geographical coverage from the EU-27 to the EU-28 including Croatia. Finally, building on the methodological contributions of Bell and Jones (2015), it separates longitudinal within-country effects from cross-sectional across-country effects.

The remainder of this article is structured as follows. First the adoption of the EWS at the European Convention and Lisbon is discussed, together with its main features. The next section presents a qualitative discussion of the effects of the EWS. The third section provides an overview of the nascent empirical literature on Reasoned Opinions and establishes hypotheses for further testing. In particular, based on a discussion of the different kinds and measures of euroscepticism, it argues that euroscepticism has been understudied in the existing literature. The fourth section finds empirical support for the importance of electoral rather than attitudinal euroscepticism. The final section concludes.

## **I. The Adoption and Features of the Early Warning System**

After its introduction by the Maastricht Treaty of 1992, many actors believed that the principle of subsidiarity required stricter policing – the German Länder (the federated states) being the most notable among these (Swenden, 2004, p. 375). While the public had become more eurosceptic, the pace of integration had not really slowed down (Pollack, 2000; Toshkov, 2011). Relatedly, calls of a democratic deficit in the EU continued to abound (Crombez, 2003; Follesdal and Hix, 2006). Some actors even proposed to introduce an exhaustive competence catalogue to delineate exactly the competences of the EU (Swenden, 2004).

In this context of rising euro-scepticism and talk about a democratic deficit, most delegates at the 2002–03 Convention on the Future of Europe looked favourably upon proposals to give national Parliaments (NPs) a role in policing the principle of subsidiarity (Cooper, 2006; European Convention, 2003; House of Lords, 2003). The details of the proposed Early Warning System were described in a new version of the *Protocol on the application of the principles of subsidiarity and proportionality*, partially reproduced in the online Appendix.

Per Article 5, the EWS would give NPs 6 weeks to vet Commission proposals in areas of shared competence. Each national parliamentary chamber would then be able to issue a Reasoned Opinion (RO) if it felt a proposal did not comply with the principle of subsidiarity. In terms of consequences, Article 6 of the Protocol described what is known as the yellow card (although the Treaty does not mention this term). In order to determine whether a proposal would receive a yellow card, ROs issued by unicameral NPs would count as two votes, while ROs issued by a chamber of bicameral NPs would count as one vote. If the ROs represented at least one third of all the votes, the Commission would have to review its proposal.

At first sight, the proposed yellow card procedure seems to give significant formal power to the NPs. However, it requires only that the Commission review its proposal, which does not imply an obligation to actually revise it. Indeed, Article 6 states that ‘the Commission may decide to maintain, amend or withdraw its proposal’. The only real constraint on the Commission would be that it would have to give reasons for its decision, and that a case could be taken to the European Court of Justice for *ex-post* judicial review.

Although the draft Constitution was signed by the Intergovernmental Conference of June 2004, its entry into force was prevented by failed referenda in France and the Netherlands. Hence the EWS only took effect on 1 December 2009 when the Lisbon Treaty of 2007 came into force.

The Lisbon version of the EWS, reproduced in the online Appendix, is very similar to the system proposed by the Convention. It has a scrutiny period of eight weeks instead of six, and an orange card on top of the yellow card (Barrett, 2008). Since no orange card has been issued so far, I do not discuss it here; the relevant rules are in Article 7(3), reproduced in the online Appendix.

## II. The Effects of the Early Warning System

Since the EWS came into effect in December 2009, only three yellow cards have been triggered. In addition, only one of the related proposals was retracted by the Commission. In 2012, the Commission retracted the Monti II proposal related to the freedom of establishment and the freedom to provide services after it received a yellow card (Cooper, 2015). While the proposal was retracted, the Commission claimed the reason behind the retraction was a lack of support in the Council and the European Parliament, not an infringement on subsidiarity. In 2013, the Commission’s proposal for a European Public Prosecutor’s Office (EPPO) received a yellow card, but was maintained. Similarly, in 2016 the Commission maintained its proposal for a revision of the posted Workers Directive after it received a yellow card. No orange card has been triggered so far. These statistics have contributed to a perception that the EWS is ineffective.

There are two main arguments against the perception that the EWS is ineffective because so few yellow cards have been issued. First, a low number of ROs and yellow cards could actually mean that the EWS is very effective, because the Commission is so afraid of receiving a yellow card that it effectively restrains itself to never propose legislation that is not in compliance with the principle of subsidiarity. Of course, the strength of this first defence is limited by the Commission having maintained its proposals after two out of three yellow cards.

Actual yellow cards aside, in its annual reports on subsidiarity and proportionality, the Commission does give concrete examples of how it ‘has examined subsidiarity and proportionality in its impact assessments, reorienting or abandoning its proposals as a result’ (European Commission, 2008, p. 4). Before taking office, the Juncker Commission ‘undertook to place subsidiarity at the heart of the European democratic process’, and in 2015 ‘put forward a limited number of new initiatives and announced the withdrawal of a large number of pending proposals’ (European Commission, 2016, p. 2).

A second defence of the EWS focuses on its indirect effects. Rather than seeing the EWS as a failed mechanism to give NPs a veto against Commission proposals, this line of reasoning sees it as a way of enhancing the dialogue between the public, NPs and the Commission. According to scholars advocating this view, the EWS has forced the Commission to provide stronger justification for its proposals (Kiiver, 2012), given NPs means and incentives to pay more attention to EU affairs (Miklin, 2017), and on the way moved the EU’s legislative process from a confrontational logic to one of argument and constructive debate (Cooper, 2006).

To conclude this section, it is safe to say that opinions on the effects of the EWS differ. In order to assess its impact more rigorously, a credible counterfactual of the Commission’s proposal behaviour in the absence of the EWS would be needed. Given the difficulties inherent in establishing such a counterfactual,<sup>2</sup> this article moves away from trying to gauge the effects of the EWS directly, and instead focuses on when NPs send Reasoned Opinions.

### III. When Do National Parliaments Send Reasoned Opinions?

Building on a short review of the relevant empirical literature, this section develops hypotheses regarding when national Parliaments are more likely to issue a Reasoned Opinion.

A first important factor which may affect the number of ROs is the difference in parliamentary procedures across member states. Auel *et al.* (2015) develop a measure of parliamentary strength, and study the link with several measures of parliamentary activity. Their measure uses data from the project Observatory for Parliaments after the Lisbon Treaty (OPAL) on three dimensions: access to information, information-processing capacities and enforcement instruments. Covering all 40 chambers<sup>3</sup> of EU national Parliaments over the period 2010–12, their sample has a total of 161 ROs.

<sup>2</sup>The counterfactual would have to state how many (subsidiarity-infringing or not) proposals the Commission would have made in the absence of the EWS, but controlling for all other changes like the advent of the Euro crisis, changes in the Commission’s composition, in member state governments, in levels of euroscepticism etc.

<sup>3</sup>Until July 2013, when Croatia joined, the EU had 27 member states. Of these, 14 have a unicameral parliament, and 13 a bicameral parliament, resulting in a total of 40 chambers. With the addition of unicameral Croatia, the EU-28 counts 41 chambers.

For most of their activity measures, Auel *et al.* (2015) find a positive correlation between institutional strength and activity at the chamber level. For instance, the correlation between their OPAL measure of institutional strength and debating on European affairs is  $\rho=0.3$ . Regarding the EWS, they argue, two competing hypotheses seem plausible. On the one hand institutionally strong chambers of Parliament can be expected to make active use of the EWS by issuing many ROs. On the other hand, institutionally weak chambers of Parliament may issue more ROs in order to compensate for their lack of alternatives. However, in the sample the correlation is close to zero (0.05), supporting neither hypothesis and prompting further testing.

Gattermann and Hefftlar (2015) extend the period under study to 2010–13 and conduct a more fine-grained analysis by considering individual draft legislative acts. With 411 draft legislative acts and 40 chambers, their sample consists of 16,440 dyads. Since NPs issued only 268 ROs in the sample, Gattermann and Hefftlar use a rare events logit regression (King and Zeng, 2001). They find that NPs are significantly more likely to issue a Reasoned Opinion if a minority government is in place, if the Parliament is polarized on EU integration, if sectoral committees rather than only European Affairs Committees are allowed to draft ROs, and if other NPs have issued ROs.

While Williams (2016) extends the analysis by another year to cover 2010–14, the number of observations in his study is significantly lower at 320. On the one hand, he considers only the 33 directly elected chambers minus Croatia. On the other hand, he groups all draft legislative acts per European semester, of which he covers 10. His main finding is a positive relationship between public euro-scepticism and the number of ROs issued by NPs in the following semester. In addition, he finds a positive effect of GDP per capita and of being an upper chamber on the number of ROs.

### *Two Hypotheses Concerning Euro-scepticism*

Williams (2016, p. 508) discusses the relevance of public euro-scepticism as follows: ‘in a desire to win more votes and secure re-election, governing parties in EU member state parliamentary chambers should respond to public attitudes concerning the EU [...]. I expect that when public opposition to the EU is greater [...] the chambers of national parliaments will be more prone to issue reasoned opinions within the EWS’.

Empirically, he indeed finds a statistically significant relationship between public euro-scepticism and the number of ROs sent in the next European semester, where public euro-scepticism is operationalized as the fraction of people in the country who, in the latest *Eurobarometer* survey prior to the EWS deadline for a given proposal, say the EU conjures up a negative image.<sup>4</sup>

An important limitation of this analysis is the lack of discussion of different types of euro-scepticism proposed in the literature. In particular, there is no reference to the distinction between hard and soft euro-scepticism (Taggart and Szczerbiak, 2004) or the related distinction between euro-phobia and EU-pessimism (Kopecký and Mudde, 2002). Both distinctions essentially oppose a wide and diffuse opposition to the idea of European

<sup>4</sup>The exact question asked is: ‘In general, does the European Union conjure up for you a very positive, fairly positive, neutral, fairly negative or very negative image?’ Public euro-scepticism is then operationalized as the sum of the proportion of respondents answering ‘fairly negative’ or ‘very negative’.

integration versus a more narrow opposition to specific policies or institutional features of the EU.

In terms of this distinction, Williams' measure of public Euroscepticism (whether the EU conjures up a negative image) relates more to soft euroscepticism than hard euroscepticism. Theoretically, this is very sensible: since Reasoned Opinions oppose specific policies rather than the EU as a whole, soft euroscepticism seems the more relevant concept – especially given that measures of soft euroscepticism typically subsume hard euroscepticism.

However, both soft and hard euroscepticism can be studied from two perspectives: as privately held attitudes, or as a political stance expressed through voting in elections (Nicoli, 2017, p. 315). As pointed out by (Nicoli, 2017, p. 316), 'It can be argued that an attitude or a feeling acquires political relevance only when citizens are ready to translate it into the ballots'.

When applied to the issuance of ROs, the attitudinal and electoral perspectives on euroscepticism can be translated in hypotheses as follows:

*H1. Parliaments facing more public euroscepticism are more likely to send ROs.*

*H2. More eurosceptic Parliaments are more likely to send ROs.*

The first hypothesis would imply that Parliaments respond directly to the public's attitudes to European integration. Specifically, it holds that Parliaments respond to higher levels of public euroscepticism with more Reasoned Opinions. While sensible, this hypothesis hinges on two assumptions. First, it requires that Members of Parliament (MPs) be aware of the level of public euroscepticism (which indeed they could be if they checked *Eurobarometer*). Second, as acknowledged by Williams, it requires either that the public be aware of Reasoned Opinions being sent (which seems implausible given the lack of media attention to non-card generating opinions), or that MPs respond to higher levels of public euroscepticism with more ROs even if the public is unaware of them.

H2 differs slightly but importantly from H1. Instead of focusing on the public's attitudinal euroscepticism, it focuses on electoral euroscepticism as expressed through the public's election of eurosceptic MPs. I argue that both assumptions underlying H1 are much more defensible for H2. As to the first assumption, clearly MPs are aware of their own levels of euroscepticism. Regarding the second assumption, when MPs personally oppose some policies, clearly they do not need high levels of public euroscepticism as a motivation to send ROs.

To assess the theoretical claims made above about euroscepticism and ROs, the empirical section of this paper will test H1 and H2 both jointly and in isolation. The next subsection defines additional hypotheses for testing.

### *Hypotheses for Further Testing*

In the institutional setup of the EU, the prime channel of representation for the interests of member states is the Council. Without agreement from the Council (typically by

Qualified Majority Voting), no legislative proposal can be adopted. However, in the Council only the governments of each member state are represented. Hence in a given member state, the more the Parliament differs from the government, the more it may fear that the government will not defend its interests in the Council. In response, Parliaments may send an RO to try and have their interests heard by the Commission directly.

A directly testable implication of this reasoning is that minority governments – those with coalitions representing less than half of parliamentary votes – are more likely to send ROs, as already found by Gattermann and Heffler (2015).

*H3: Chambers of Parliaments represented by minority governments are more likely to send ROs.*

As stated before, there is a big difference in strength across parliamentary chambers. The simplest hypothesis related to institutional strength would be that institutionally strong chambers send more ROs. Alternatively, weak chambers may seek to compensate for their weakness by sending more ROs. For instance, some chambers enjoy so-called mandating rights (Karlas, 2012): they can legally bind their governments to specific actions, such as voting against a legislative proposal from the EU Commission. One could imagine that chambers with such mandating rights do not need to send ROs to make their voices heard. However, given the very small but positive correlation found by Auel *et al.* (2015), the former hypothesis will be favoured for now.

*H4: Institutionally strong chambers of Parliaments are more likely to send ROs.*

Comparing upper and lower chambers (such as the Italian Senate versus the Chamber of Deputies), Williams (2016) found that directly elected upper chambers are more likely to send ROs. While he attributes this finding to their desire to exploit the (typically more limited) rights that they have, which would contradict the previous hypothesis, it could also be due to the fact that upper chambers in many countries simply have more time for debate and reflection.

*H5: Upper chambers are more likely to send ROs.*

The next section presents the data and the results of a logistic regression analysis to test the hypotheses derived above.

#### **IV. Data and Results**

As in Gattermann and Heffler (2015), the unit of analysis is the chamber-proposal dyad. Over the period 2010–16, a total of 629 draft legislative proposals and 427 Reasoned Opinions were registered in the Annual Protocol 2 Statistics 2010–17 (European Parliament, 2017). With 40 chambers and 629 proposals, the total number of observations would be 25,160. Including Croatia as of 2014 brings the total number of chambers to 41 and of observations to 25,359 (there were 199 proposals in the period 2014–16).

### *Variable Definitions and Descriptive Statistics*

The dependent variable of interest, 'RO', is a dummy variable that takes the value 1 if a chamber issued a Reasoned Opinion on a proposal, as registered in the Annual Protocol 2 Statistics (European Parliament, 2017).<sup>5</sup> Otherwise it is equal to 0.

To test H1, the variable *EU\_Neg\_Image* is replicated and extended from the same *Eurobarometer* data as used by Williams (2016). This variable is equal to the fraction of people in the country who, in the latest *Eurobarometer* survey prior to the EWS deadline for a given proposal, say the EU conjures up a negative image. As in Williams, the variable is lagged with respect to the dependent variable because the prior *Eurobarometer* survey is used. As a robustness check, the online Appendix operationalizes public euroscepticism using a different *Eurobarometer* question, namely on trust in the EU.

H2 is a novel hypothesis. Rather than focusing on public attitudinal euroscepticism, it concerns the euroscepticism of elected members of national Parliaments. The variable *Parl\_Anti\_EU* is constructed by using data from the ParlGov dataset (Döring and Manow, 2016). Specifically, it is the seat-weighted euroscepticism of the parties in Parliament.<sup>6</sup>

H3 is about minority governments. The variable *Minority\_Govt* is 1 when a minority government was present in the country of the relevant chamber at the time of the 8-week scrutiny deadline of the relevant proposal. A minority government is present if the ruling coalition has fewer than half of the seats in (the lower chamber of) Parliament. Information on cabinet seat shares was obtained from the ParlGov dataset (Döring and Manow, 2016).

Two different variables will be used to test H4 regarding institutional strength. The first variable, *Mandating*, is 1 for chambers with mandating rights, and 0 otherwise. These data were obtained from Karlas (2012) for all countries but Croatia. Since Croatia does not have mandating rights it is 0 for observations regarding Croatia. The second variable, *OPAL*, takes the more comprehensive institutional strength scores from Auel *et al.* (2015). This score is not available for Croatia.

To test whether upper chambers are more likely to send ROs as per H5, the variable *Upper* was coded 1 for upper chambers, and 0 for lower chambers.<sup>7</sup>

In addition to variables related to the hypotheses, the regression will control for two important concerns. First, there is likely to be a very high level of heterogeneity across draft legislative proposals which cannot be coded in a straightforward manner. For instance, a key characteristic that one cannot observe directly is whether a proposal actually violates the principle of subsidiarity. However, it seems reasonable to assume that by including the variable *RO\_Others*, which measures how many other chambers have issued ROs on a given proposal, one can control for a large part of the unobserved heterogeneity at the proposal level.

Another reason to include the variable *RO\_Others*, is that chambers may co-ordinate their efforts. By aligning on which proposals to target, they may be able to trigger more yellow cards.

<sup>5</sup>The two chambers of the Spanish and Irish Parliaments always issue their Reasoned Opinions jointly. Hence a Reasoned Opinion from these Parliaments is coded as a 1 for both chambers.

<sup>6</sup>*Euroscepticism* is defined based on the ParlGov variable *EU\_anti\_pro* as follows:  $Euroscepticism = (10 - EU\_anti\_pro) / 10$ . *EU\_anti\_pro* is a score on a 10-point scale of how much a given party is in favour of the EU, with a score of 10 being maximally in favour, and a score of 0 being maximally eurosceptic.

<sup>7</sup>Information on the chambers of national Parliaments can be retrieved from the EU Interparliamentary Exchange platform at [www.ipex.eu](http://www.ipex.eu).

A second control variable is *GDP\_PC* representing GDP/capita, measured in thousands of euros. Since chambers of Parliament of countries with higher levels of GDP/capita are likely to have more resources (Williams, 2016), and are more likely to be net contributors to the EU, and hence may be opposed to new initiatives, it is important to control for this variable as well.

In addition to the variables *RO\_Others* and *GDP\_PC*, it may be important to control for the topic area of the legislative proposal. To this end, the categorical variable *Topic* codes the topic area of the proposal according to the European Parliament (European Parliament, 2017).

Descriptive statistics for the dependent variable, the six independent variables and the two control variables are provided in Table 1. A correlation table is provided in the online Appendix. The highest correlation, taking a value of only 0.40, is between *EU\_Neg\_Image* and *Parl\_Anti\_EU*. There is hence no direct concern related to multicollinearity.

An overview of the 629 legislative proposals and 427 ROs by topic is provided in the online Appendix. There is significant variation in both the number of proposals and the number of ROs across topics. However, the ratio between the two does not vary drastically.

The number of ROs by country varies widely. As shown in the online Appendix, over the period 2010–16 Sweden sent 62 ROs, while Slovenia sent only 1. A more detailed table with the number of ROs per chamber and the correlations between upper and lower chambers within countries is also provided in the online Appendix.

### Methods and Results

Since each chamber of Parliament is observed for a number of consecutive legislative proposals, the data have a panel structure (where the legislative proposals can be interpreted as the time dimension). The full panel for 2010–16 is unbalanced, since Croatia can only be included as of 2014. However, since the *OPAL* variable is not available for Croatia, regressions including the *OPAL* variable will exclude Croatia and hence use a balanced panel.

Regarding the analysis of panel data, there is a long-standing debate on the use of fixed effects (FE) and random effects (RE) modeling (Bell and Jones, 2015; Clark and Linzer,

Table 1: Descriptive statistics

Variable	<i>N</i>	<i>Min</i>	<i>Max</i>	<i>Average</i>	<i>Source of underlying data</i>
<i>RO</i>	25,359	0	1	0.02	European Parliament (2017)
<i>EU_Neg_Image</i>	25,359	0.05	0.59	0.24	<i>Eurobarometer</i>
<i>Parl_Anti_EU</i>	25,359	0.08	0.53	0.28	Parlgov (Döring and Manow, 2016)
<i>Minority_Govt</i>	25,359	0	1	0.20	Parlgov (Döring and Manow, 2016)
<i>Mandating</i>	25,359	0	1	0.12	Karlas (2012)
<i>OPAL</i>	25,160	0.16	0.84	0.49	Auel <i>et al.</i> (2015)
<i>Upper</i>	25,359	0	1	0.32	EU Interparliamentary Exchange (IPEX)
<i>RO_Others</i>	25,359	0	14	0.63	European Parliament (2017)
<i>GDP_PC</i>	25,359	5.15	94.05	26.6	Eurostat
<i>Topic</i>	25,359	n.a.	n.a.	n.a.	European Parliament (2017)

2015; Wooldridge, 2010). Often, scholars regard the fixed effects approach as more rigorous, and only use the random effects approach if a Hausman (1978) specification test has negative results.

Building on Mundlak (1978), Bell and Jones (2015) developed a new approach. With this approach, one can disentangle the so-called within and between effects. The within effect of a variable is the effect of over-time variation in that variable for a given unit in the panel – a parliamentary chamber in our case. Put more simply, the within effect is the longitudinal effect. Conversely, the between effect of an independent variable is the effect of variations in the variable across units in the panel. Again, put more simply, the between effect is the cross-sectional effect – the effect of a variable when comparing different parliamentary chambers.

In a traditional FE regression, all time-invariant variables are discarded and only the within effects are estimated. Conversely, in a traditional RE regression the within and between effects are implicitly assumed to be identical, and if this is not the case the estimated coefficients ‘will be uninterpretable weighted averages’ of the two effects (Bell and Jones, 2015, p. 137). Given these downsides of the FE and RE approaches, this paper uses the within-between estimator of Bell and Jones (2015), which aims to combine the best of both methods. For comparison, standard FE and RE regressions are reported in the online Appendix, together with a discussion showing that the results corroborate those of the within-between method.

The Bell and Jones (2015) within-between estimator can be operationalized by running a random effects regression after a simple data transformation. The transformation concerns those variables for which one wants to estimate the within and between effects separately. For each such variable, two new variables need to be constructed: one measuring the average over time for each unit of the panel, and one measuring the variation over time. For each panel unit (in our case the parliamentary chambers), this second variable is constructed by simply subtracting the average over time from the original variable. The correlation between these transformed variables is reported in the online Appendix.

Using this procedure, the variables *EU\_Neg\_Image* and *Parl\_Anti\_EU* were each transformed into two new variables: *AvgNeg\_Image*, *DeavgNeg\_Image*, *AvgAnti\_EU* and *DeavgAnti\_EU*. In the variable names, *Avg* refers to time averages for a given country, while *Deavg* refers to de-averaged variables constructed by subtracting the average value from the original variable. For a given country, these de-averaged variables capture over-time variations around the country average.

As an illustration, the online Appendix plots the variables *EU\_Neg\_Image* and *Parl\_Anti\_EU* over time for the UK and Germany, and shows the transformation of *EU\_Neg\_Image* into *AvgNeg\_Image* and *DeavgNeg\_Image* for the UK. Since *Parl\_Anti\_EU* can only take a new value with a government change while *EU\_Neg\_Image* can change every semester, clearly the time variation is a lot higher for the latter variable.

The dependent variable RO measures whether a chamber of Parliament issued a Reasoned Opinion on a given proposal. Since this outcome is dichotomous, logistic regressions will be used. To test hypotheses H1–H5, a logistic random effects panel regression was conducted on the variables listed in Table 1, after substituting the transformed variables. Note that the variables have all been defined such that the hypotheses correspond to positive coefficients.

The results of this regression are reported in Table 2. While Model 1 tests H4 using the Mandating variable, Model 2 uses the more comprehensive *OPAL* variable (but excludes Croatia). Models 3 and 4 include dummy variables for the topic area. They drop proposals in topic areas that have no ROs because these would have been predicted perfectly.

The main contribution of this article lies in the results for H1 and H2. By using a larger dataset, the within-between methodology (Bell and Jones, 2015), and by controlling for electoral euroscepticism, novel results are obtained. Unlike Williams (2016), this study does not find significant support for H1, which holds that Parliaments facing more public euroscepticism are more likely to issue ROs.

While the within effect of public euroscepticism (corresponding to the transformed variable *DeavgNeg\_Image*) is positive, it is not statistically significant. The between effect (*AvgNeg\_Image*), measuring differences across Parliaments, even has a negative sign and is significant at the 10 per cent level in Models 1 and 3. This indicates that when comparing different Parliaments and controlling for all the other variables in the regression, those in countries with higher levels of public euroscepticism would actually be less likely to issue ROs.

A novel hypothesis about electoral euroscepticism, H2 holds that more eurosceptic Parliaments are more likely to issue ROs. Looking at the within effect (*DeavgAnti\_EU*), this hypothesis would not be supported. A likely reason is insufficient over-time variation. As illustrated in the online Appendix, since time variation only comes from changes in government cabinets, it is very limited over the 2010–16 period. However, the between effect across chambers (*AvgAnti\_EU*) is significantly positive. A discussion of the results on euroscepticism is provided in the next section, after the findings for the remaining hypotheses and some robustness checks.

The results for H3–H5 are broadly consistent with those found in the literature. Using an extended dataset, H3 is confirmed more strongly than by Gattermann and Hefftlar

Table 2: Within-between logistic panel regression on Reasoned Opinions

<i>Logistic panel of RO</i>	<i>Model 1</i>	<i>Model 2</i>	<i>Model 3</i>	<i>Model 4</i>
<i>AvgNeg_Image</i>	-2.566* (1.506)	-1.858 (1.628)	-2.534* (1.513)	-1.837 (1.639)
<i>DeavgNeg_Image</i>	1.922 (1.192)	1.950 (1.197)	1.729 (1.213)	1.767 (1.212)
<i>AvgAnti_EU</i>	3.749*** (1.390)	2.649* (1.399)	3.696*** (1.379)	2.605* (1.389)
<i>DeavgAnti_EU</i>	-0.592 (2.485)	-0.551 (2.491)	-0.915 (2.549)	-0.884 (2.548)
<i>Minority_Govt</i>	0.548*** (0.197)	0.560*** (0.196)	0.563*** (0.190)	0.572*** (0.191)
<i>Mandating</i>	0.036 (0.337)		0.042 (0.334)	
<i>OPAL</i>		1.721 (1.149)		1.705 (1.137)
<i>Upper</i>	0.496* (0.281)	0.588** (0.237)	0.490* (0.278)	0.582** (0.235)
<i>RO_Others</i>	0.399*** (0.021)	0.398*** (0.021)	0.413*** (0.019)	0.413*** (0.019)
<i>GDP_PC</i>	0.017*** (0.006)	0.015*** (0.005)	0.017*** (0.006)	0.015*** (0.005)
Topic dummies	No	No	Yes	Yes
Constant	-6.273	-6.941	-5.961	-6.618
N	25,359	25,160	24,231	24,040
Clusters (chambers)	41	40	41	40

Notes: Robust standard errors clustered at the chamber level in parentheses. \*  $p < 10\%$ , \*\*  $p < 5\%$ , \*\*\*  $p < 1\%$

(2015): Parliaments with minority governments are significantly more likely to issue ROs. Like Auel *et al.* (2015), this study cannot confirm H4 regarding institutional strength, although the signs of the coefficients of both *Mandating* and *OPAL* are consistent with the hypothesis that stronger chambers of Parliament send more ROs. As in Williams (2016), H5 is supported since upper chambers are found to be significantly more likely to issue ROs.

The two control variables, *RO\_Others* and *GDP\_PC* are statistically significant at the 1 per cent level in all regressions. This confirms the expectations that parliamentary chambers are more likely to issue ROs when other chambers have done so as well, and that chambers from countries with higher levels of GDP per capita are more likely to issue ROs.

### *Robustness*

Since the main new findings relate to H1 and H2 (public and parliamentary euroscepticism), it is important to assess the robustness of these findings. In particular, one could wonder if the negative finding for H1 (public euroscepticism) holds up if the variables related to parliamentary euroscepticism are dropped. Similarly, one could wonder if the positive finding for H2 (parliamentary euroscepticism) holds up if the variables related to public euroscepticism are dropped. The results of the corresponding regressions are reported in the online Appendix. They confirm that the results pertaining to H1 and H2 are indeed robust to dropping the variables related to H2 and H1, respectively.

As mentioned before, the online Appendix also shows robustness to an alternative measure of public Euroscepticism, and consistency with the results of standard FE and RE regressions.

### *Discussion of the Results Relating to Euroscepticism*

The within effect of public euroscepticism, measuring how changes in attitudinal euroscepticism over time affect the number of ROs sent by a given chamber, is not statistically significant – and this in spite of ample time variation that would allow the effect to be estimated. This means that there is no robust statistical support for the notion that MPs respond directly to fluctuations in public attitudinal euroscepticism.

Considering jointly the effects of the variables related to H1 and H2, the conclusion seems to be the following: controlling for euroscepticism of the elected parliament, attitudinal public euroscepticism has no significant influence on the likelihood of Parliaments to issue ROs. In contrast, Parliaments with high average levels of euroscepticism (i.e. countries with high levels of electoral euroscepticism) are more likely to issue ROs.

This suggests that the optimism of Williams (2016) regarding short-term political responsiveness warrants caution: based on the evidence presented here, Parliaments do not respond to fluctuations in attitudinal euroscepticism with more or fewer ROs. However, the evidence does suggest that in countries where the public is willing to elect eurosceptic parliaments, more ROs are issued. This suggests that the distinction between attitudinal euroscepticism and electoral euroscepticism is indeed relevant for political outcomes.

The finding that eurosceptic Parliaments issue more ROs has an implication for the alleged democratic deficit in the EU (Crombez, 2003; Follesdal and Hix, 2006). Indeed, one of the key desiderata of a democratic system is responsiveness of legislative output to voters' preferences (Crombez, 2003). To the extent that EU integration has now become

politicized in national elections (Hooghe and Marks, 2009), ROs issued under the EWS are found to constitute a new channel of responsiveness, provided voters are willing to express their eurosceptic attitudes by electing eurosceptic national Parliaments.

The interpretation that more ROs are issued in countries with Eurosceptic parliaments is consistent with a notable difference between Model 1 and Model 2. When using the *OPAL* score of parliamentary strength as in Model 2, the effect of *AvgAnti\_EU* is no longer statistically significant at the 1 per cent level but only at the 10 per cent level. A plausible explanation is that, over time, eurosceptic parliaments make sure that they obtain a more comprehensive set of formal rights, and thus a higher *OPAL* score. If this is the case, the positive coefficient of *OPAL* would actually be due at least in part to historical euroscepticism of the Parliament.

## Conclusion

This article investigated the Early Warning System in the EU. Designed during the 2002–03 European Convention and having taken effect with the Lisbon Treaty in December 2009, the system gives national Parliaments a right to review the Commission's draft legislative proposals in the light of the subsidiarity principle. This principle, which featured prominently in the Maastricht Treaty in response to concerns over excessive centralization and a democratic deficit in the EU, establishes a presumption in favour of political action at the member state level.

Under the EWS, chambers of national Parliaments can send Reasoned Opinions to the Commission if they find that a proposal violates subsidiarity. If one third of chambers issue a Reasoned Opinion, a yellow card is triggered.

Opinions regarding the effects of the EWS differ. However, it is clear both from the Treaty text and its history of use that the EWS does not in any way give national Parliaments veto power against the Commission's proposals. Since 2010, only 427 ROs and three yellow cards have been issued, and the Commission maintained its proposal for two out of the three yellow cards. On the other hand, the Commission does claim that it has refocused and reduced the volume of proposals. It also seems clear that the EWS and the political dialogue between the Commission and national Parliaments have increased the volume and quality of the debate between them.

Since it is hard to establish a credible counterfactual against which to evaluate the effects of the EWS, this article has focused on an empirical study of when national Parliaments actually issue Reasoned Opinions. Compared to the literature, it significantly extends the time period under study to 2010–16. It also extends the geographical coverage from the EU-27 to the EU-28 by including Croatia from its accession. Taking the chamber-proposal dyad as the unit of analysis, this brings the total number of observations to 23,359, with ROs being issued for 427 of these.

The main contribution of this article lies in the results concerning euroscepticism. By using a larger dataset, the within-between panel methodology (Bell and Jones, 2015), and by controlling for electoral euroscepticism novel results are obtained regarding euroscepticism and the issuance of ROs. In particular, contrary to the findings of Williams (2016), public attitudinal euroscepticism is found to have no statistically significant effect on the issuance of ROs. Rather, electoral euroscepticism as measured by the election of eurosceptic Parliaments is found to lead to significantly more ROs.

The results for the remaining three hypotheses developed in this article strengthen the findings of the existing literature. First, chambers of Parliaments with minority governments are significantly more likely to issue ROs. This is intuitive as ROs offer dissenting Parliaments a means to bypass their minority governments represented in the Council. Second, while it seems plausible that institutionally strong chambers of Parliament would send more ROs, there is no statistically significant support for this. Third, upper chambers of bicameral Parliaments are found to be significantly more likely to send ROs. This may be because they want to exploit their typically limited competences, or simply because they have more time than lower chambers.

In conclusion, while this article confirms most of the findings in the nascent empirical literature on the issuance of ROs, it suggests that optimism regarding short-term political responsiveness to publicly held attitudes warrants caution: based on the evidence presented here, Parliaments do not respond to fluctuations in euroscepticism with significantly more or fewer ROs.

However, the evidence does suggest that in countries where the public actually elects eurosceptic parliaments, more ROs are issued. This suggests that the distinction between attitudinal and electoral euroscepticism is indeed relevant for political outcomes. Furthermore, to the extent that the EU has become salient in national elections, the EWS can be said to have increased responsiveness to voters, and hence decreased the alleged democratic deficit of the EU.

As the Early Warning System continues to be in operation, new data will become available for empirical tests. In addition, new questions related to the EWS may be studied. For instance, we know from anecdotal evidence that national Parliaments sometimes co-operate in pursuit of a yellow card (Cooper, 2015). However, to the best of my knowledge no systematic study of interparliamentary co-operation has been presented in the literature.

On the theoretical front, the design and the merits of the EWS as an institution may be further explored. Krehbiel (2017) identifies a trade-off between consensus, timeliness and wisdom (the use of all available information) in voting procedures. In this framework, the EWS may have increased the wisdom of EU decision-making by giving national Parliaments a means to send signals directly to the Commission. The non-binding character of the EWS for the Commission, though puzzling from the point of view of consensus and wisdom, may be an attempt not to hamper the timeliness of decisions. An avenue for future research is to set up a game-theoretical model to formally study these notions.

*Correspondence:*

Martijn Huysmans  
 Utrecht University, School of Economics  
 PO Box 80125  
 3508TC Utrecht  
 Netherlands  
 email: m.huysmans@uu.nl

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### **Supporting Information**

Additional supporting information may be found online in the Supporting Information section at the end of the article.