Substance and Subsidiarity: Co-issuance in the Early Warning System*

Martijn Huysmans†

Philippe van Gruisen‡

Abstract

The Early Warning System (EWS) allows national Parliaments in the EU to issue Reasoned Opinions (ROs) against proposed new legislation. If one third of them do, a yellow card is triggered. In theory, the goal of this system is for Parliaments to police the subsidiarity principle. This article shows that the EWS is also about substance, and identifies the dimensions of conflict in the EWS by studying the co-issuance of ROs by Parliaments. It finds that closely aligned levels of economic development, rather than ideological or geographical proximity, are most strongly associated with the co-issuance of ROs. To explain the importance of the economic dimension across topics, we suggest that proposals with an impact along economic lines may be especially likely to trigger opposition in the form of ROs. Increasing co-issuance over the period 2010-2016 suggests that Parliaments are learning to coordinate transnationally, although no yellow cards have materialized since.

Keywords: European Union, Subsidiarity, Early Warning System, Dimensions of Conflict

* The authors would like to thank Thomas Malang, Katjana Gattermann and seminar participants at Utrecht School of Governance and EPSA 2019 for their feedback on earlier versions. We also gratefully acknowledge a suggestion of Simon Hug that led to the start of this project, methodological discussions related to this project with Vincent Schippers, and research assistance by Pieter Devloo for interviews with IPEX correspondents. All shortcomings remain our own.

† Assistant Professor, Utrecht University, School of Economics. Corresponding author. Mailing address: PO 80125, 3508 TC Utrecht, Netherlands. Email: m.huysmans@uu.nl.

‡ Assistant Professor, Leiden University, Department of Economics. Email: p.van.gruisen@law.leidenuniv.nl.

1 Introduction

The Early Warning System (EWS) came into effect with the Treaty of Lisbon in December 2009 (Kiiver 2012; Raunio 2009). Under the system, chambers of EU National Parliaments can issue a Reasoned Opinion (RO) if they find that a proposal violates the principle of subsidiarity. According to this principle, the EU should only act if that would be more efficient than leaving matters to the individual Member States (Van Kersbergen & Verbeek 2007). If one third of Parliaments issue an RO, a yellow card is triggered and the Commission has to reconsider its proposal.

In theory, the EWS is only meant for policing subsidiarity. Parliaments can indicate concerns of policy substance and proportionality in pre-draft consultations (Fromage & Kreilinger 2017) and in Political Dialogue contributions (Rasmussen & Dionigi 2018). In practice, scholars have observed that ROs also address proportionality and substantive policy concerns (Fromage & Kreilinger 2017). A notable case was the revision of the posted workers directive, where mainly Eastern European countries issued ROs, some explicitly referring to the expected adverse economic effects for them. If ROs sometimes explicitly mention elements of policy substance, a natural question is whether policy preferences play a more general implicit role in the EWS as well. If so, one should be able to observe substantive dimensions of conflict in the pattern of ROs.

Traditional methods for uncovering dimensions of conflict include NOMINATE and Bayesian methods (Hagemann 2007). However, a downside of these methods is that they yield dimensions that are still to be interpreted (Toshkov 2017), and that may not be causal. For instance, geography may appear to be important because of spatial correlations in preferences (Bailer et al. 2015). What looks like an East-West dimension may actually be driven by different levels of economic development. In addition, dimensional scaling methods do not allow for controlling for the propensity of Parliaments to issue ROs. In contrast, this article studies whether co-issuance, controlling for Parliament fixed effects, can be explained by proximity on a number of pre-specified dimensions all at once.

Building on a short overview of related literature, we identify several hypotheses for empirical testing. Since we are interested in co-issuance, the analysis is dyadic: we consider pairs of national Parliaments. Our dependent variable codes whether both Parliaments in a dyad issued an RO on a given proposal. The explanatory variables include distance in left-right ideology, economic development, anti-pro integration ideology, and geography. A time trend is added to investigate whether co-issuance is on the rise.

From the theoretical argument and empirical tests included in this article follow three main contributions to the literature. First, we establish that there are indeed substantive dimensions of conflict in the EWS: it is not just about subsidiarity, but also about substance. Second, we find that having similar levels of economic development is the most important factor in explaining co-issuance of ROs. Finally, we find an upward trend in co-issuance over the period 2010-2016, suggesting that coordination among

national Parliaments is getting more effective as a process of transnationalization takes place (Christiansen et al. 2014).

Taken together, our results paint the picture of the EWS as a deeply political mechanism. Rather than a technical tool to monitor subsidiarity, it is being used by national Parliaments to signal substantive opposition to policies they dislike. Considering several likely dimensions of conflict together, this opposition seems to run most strongly along lines of economic development.

Our paper is structured as follows. The next section briefly explains the EWS, whereas section three presents an overview of the literature and the hypotheses that follow from it. Section four describes the data and empirical model. Our results and a number of sensitivity analyses are presented in section five and six, respectively. We conclude in section seven.

2 The Early Warning System

Formally, subsidiarity is defined in Article 5(3) of the Treaty on European Union (TEU): "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, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level". Related to subsidiarity is the principle of proportionality, defined in Article 5(4) TEU: "the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties".

Article 5 of the Protocol on the application of the principles of subsidiarity and proportionality stipulates that the Commission should justify its proposals with respect to these principles, and provide an impact assessment.

The operational rules of the EWS are specified in Articles 6 and 7 of the Protocol. Under the EWS, national Parliaments have eight weeks to evaluate the proposals sent to them by the European Commission. Each RO from a chamber of a bicameral Parliament counts as one vote, while an RO from a unicameral Parliaments counts as two votes. If the ROs issued amount to at least one third of the votes, a yellow card is triggered and the Commission has to reconsider the proposal. In the area of freedom, security and justice, only one fourth of the votes is required.

ROs are relatively rare (Gattermann & Hefftler 2015). The EWS only applies to proposals in areas of shared competence between the Union and the member states. Over the period 2010-2017, out of 718 proposals subject to the EWS, only 177 or less than 25 percent received an RO, and only three yellow cards were triggered (Cooper 2018).

Although a yellow card means that the Commission has to reconsider the proposal, it may still decide to maintain it unchanged. Hence the EWS clearly does not give (collective) veto power to the national Parliaments. A proposed red card procedure would have given a hard veto, but it was never implemented. However, the EWS and the wider Political Dialogue do seem to have given the national Parliaments some opportunities to influence the Commission (Cooper 2018).

3 Related literature and hypotheses

So far, the literature on the EWS has focused either on the issuance of ROs by individual chambers of Parliament, or on coordination and social influence across Parliaments. In contrast, this article focuses on the dimensions of conflict in the EWS: which dimensions, if any, explain the final pattern of co-issuance of ROs?

There are three main branches of literature that this article is related to. The first is on the issuance of ROs. The second on coordination and social influence in the EWS. The third is on the policy dimensions of EU politics.

The emerging quantitative literature on the EWS has focused on explaining the issuance of ROs. Researchers have established, among other findings, that Eurosceptic Parliaments and Parliaments with minority governments issue more ROs (Auel et al. 2015; Gattermann & Hefftler 2015; Huysmans 2019a; Williams 2016). While we use the same source data on ROs, our focus is on the co-issuance of ROs and hence on characteristics of dyads of Parliaments, rather than on Parliaments in isolation.

Substantively, this article is related to the literature on coordination and social influence in the EWS. Formal possibilities for coordination include IPEX (an IT platform and website for interparliamentary exchange of information) and COSAC (Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union). Informal possibilities for coordination include contacts among National Parliamentary Representatives in Brussels (Christiansen et al. 2014). Other forms of informal coordination are specific to sets of countries. In interviews, the IPEX coordinators of the Visegrad countries (Hungary, the Czech Republic, Poland, and Slovakia) acknowledged occasional coordination in the margin of Visegrad meetings.

The literature on transnational coordination in the EWS has focused on case-based evidence of coordination (Auel & Neuhold 2017; Christiansen et al. 2014; Cooper 2015; Knutelská 2011; Pintz 2015; Sprungk 2013). Recently, Malang et al. (2017) have used network analysis to provide quantitative evidence for social influence along party family lines. They find that Parliaments are more likely to issue an RO after other Parliaments with a majority party from the same party family have done so. While this is obviously an important finding, we focus on the final patterns of co-issuance on a given proposal, rather than only on social influence by prior issuers of ROs.

Probably the most famous documented case of coordination is the Monti II proposal regarding the right to strike. The Danish Parliament provided a blueprint for an RO, contributing to the first yellow card (Cooper 2015). The second yellow card was issued on the proposal for establishing a European Public Prosecutor's Office (EPPO). Here, the UK House of Commons and the Dutch Tweede Kamer played a leading role (Pintz 2015: 99). More recently, the revision of the posted workers directive prompted a third yellow card. In this case, the most striking documented fact was not explicit coordination, but rather that almost all 14 ROs were issued by Eastern European countries (Auel & Neuhold 2017; Fromage & Kreilinger 2017).

While these ROs addressed subsidiarity concerns, many of them also featured economic arguments. For instance, the Hungarian National Assembly mentioned that by proposing to equalize remuneration for posted and local workers, the proposal "aims to artificially equalize the diverging wage levels of Member States, which do not distort competition and which are primarily due to their different economic development". The Czech Chamber of Deputies included economic concerns even more explicitly: "the Czech Republic as a relatively newly acceding State still benefits from a competitive advantage in labor costs, and therefore this draft directive could endanger Czech companies".

In the case of the posted workers, the ROs of the Eastern member states seem at least partially motivated by substantive objections. More specifically, given their lower level of economic development, they were afraid that the proposal would limit the opportunities of their citizens for posted work.

The third yellow card motivates this article's research question on the dimensions of conflict in the EWS. Was the co-issuance of ROs by Eastern European countries unique to posted workers? And if not, what is the relative importance of the ideological, economical, or geographical dimensions? It is important to note that each dimension may have a direct effect through preferences, and an indirect effect through coordination and influence along the lines of these dimensions. We are interested in the total importance of these dimensions.

Our research question clearly relates to the large literature on the dimensions of politics in the EU. The relative consensus until recently seemed to be that, at least in the European Parliament (EP), there are two main dimensions: left-right ideology and anti-pro EU integration (Baller 2017; Hix et al. 2006). However, recent work on the dimensions of conflict in the Council has highlighted the importance of the economic dimension (Bailer et al. 2015).

One reason the economic dimension is important, is that it determines to a large extent whether a member state is a net contributor to or a net receiver from the EU budget. Net contributors can be expected to be against proposals that will cost them money. In addition, regulatory adjustment costs often depend on economic development. Less developed countries may be against proposals that force them to open up their markets even more to competition (Kaeding & Selck 2005: 282), or to implement costly new standards already common in more developed countries. Indirect evidence of the importance of economic development in driving policy preferences is that peripheral countries on this dimension were much more likely to support an exit right from the EU at the 2002-2003 European Convention (Huysmans 2019b).

A fine-grained illustration of the economic dimension in Council voting is the topic of Genetically Modified Organisms (GMOs). Next to public opinion and party affiliation of the agriculture Minister, structural economic variables affected votes in favor of GMO authorization in the period 2004-2014 (Mühlböck & Tosun 2018). Specifically, whether countries already grew GMOs, the share of agricultural value added in GDP, and the share of small farms all had a statistically significant impact on votes. While we cannot control for such topic-specific economic indicators, the overall level of

economic development is likely to play a structural role in shaping national Parliaments' preferences over EU policies.

Based on the evidence from case studies and the related literature discussed above, this section establishes four hypotheses. The first three hypotheses state that co-issuance (whether accidental or due to coordination) is more likely for dyads with similar substantive policy preferences: they want to signal opposition to the same policies. Consistent with the literature on the dimensions of EU politics, we proxy for these preferences by looking at Parliaments' left-right positions, their countries' levels of economic development, and their stance on EU integration.

H1. Dyads with similar left-right ideology are more likely to co-issue ROs.

H2. Dyads with similar levels of economic development are more likely to co-issue ROs.

While anti-pro EU stance is an important dimension of voting in the EP, the EWS works differently. Under the EWS, Parliaments only issue an RO if they oppose a proposal, rather than voting on each proposal. From the literature on the EWS, we know that Parliaments with an anti-EU position are more likely to issue ROs. This means that we are less likely to observe moderate or pro-EU Parliaments co-issuing ROs. By including Parliament fixed effects, we are able to control for Parliaments' propensities to issue ROs. Hence the remaining effect of differences on the anti-pro EU dimension on co-issuance is likely to be smaller, yet we still hypothesize it to be positive.

H3. Dyads with similar anti-pro EU ideology are more likely to co-issue ROs.

Finally, from the literature on transnationalization and case-based evidence of coordination we expect that over time Parliaments are learning to coordinate in order to maximize their influence. This leads us to expect an upward time trend in the co-issuance of ROs.

H4. Over time, dyads are more likely to co-issue ROs.

4 Data and methods

This section describes the data and methods used to test the hypotheses listed above.

4.1 Dependent variable

The dependent variable *RO_Dyad* is 1 if the lower chambers of both countries in a dyad issued an RO. We focus on lower chambers, because we do not have data on the left-right and EU integration

ideology of upper chambers.[1] The source data covers the period 2010-2016 and comes from the EP's Directorate for Relations with national Parliaments (European Parliament 2017).

Figure 1 visualizes the RO network for lower chambers, represented as the nodes. The node size represents the number of ROs issued, while the width of edges is proportional to the number of joint ROs. With 62 ROs, Sweden is an outlier in terms of ROs issued. The Appendix provides a detailed table with the number of ROs per country and per dyad. It shows for instance that out of 6 proposals on which Hungary issued ROs, the Czech Republic and Romania co-issued an RO on 4 respectively 5 out of them. With 14 ROs on the same proposals, the dyad with the most co-issued ROs is Sweden and the Netherlands.

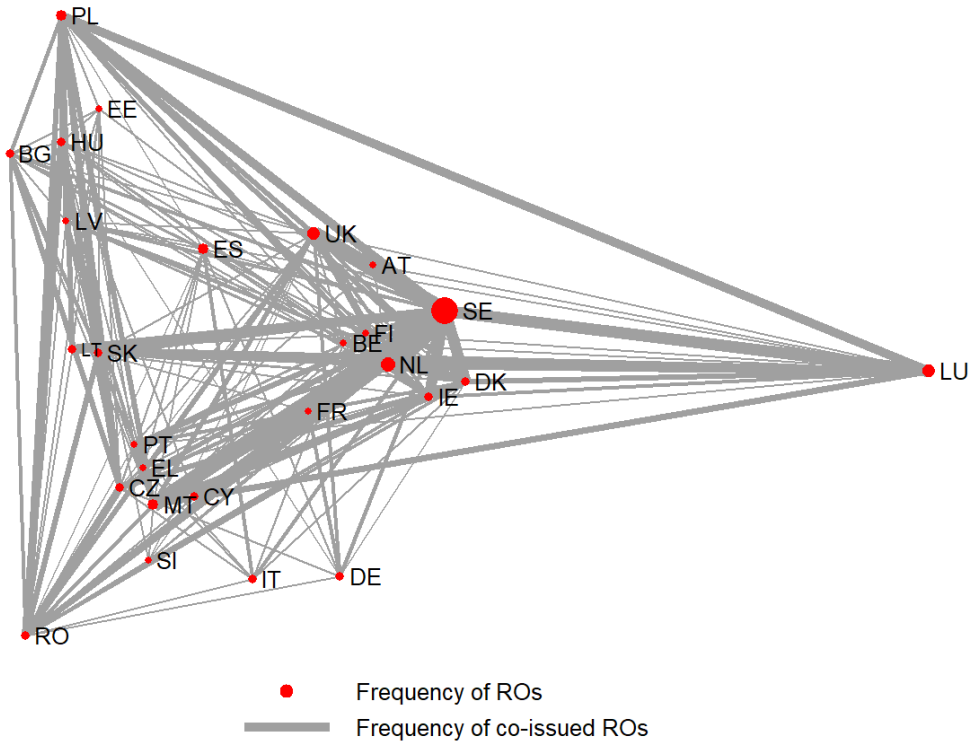

Figure 1. Reasoned Opinions network data for lower chambers 2010-2016.
Notes: Vertical links represent joint ROs by Parliaments with similar levels of economic development, while horizontal links represent joint ROs from Parliaments with similar left-right ideologies. Edge and node sizes represent the level of co- and individual issuances, respectively. The figure was created in Stata using the nwcommands package developed by Thomas Grund.

The nodes have been positioned in space according to their average GDP per capita (x-axis) and their average left-right score (y-axis). Hence, vertical links represent joint ROs by Parliaments from countries with similar levels of economic development, while horizontal links represent joint ROs by Parliaments with similar left-right ideologies. Both types of links seem to be prevalent. Details on the

[1] In the sensitivity analyses we redo the exercise and include the upper chambers in our study. The results are similar.

underlying time-varying variables are provided in the next subsection. Since the left-right score of a Parliament may shift every election, the vertical positions of the nodes can be considered as a time-average, compared to the relatively stable GDP per capita.

Since Croatia joined in the middle of the period, we exclude it from the analysis. Furthermore, only proposals with at least 1 RO are included and, as we have mentioned above, we focus on lower chambers only. This leaves 121 proposals in our analysis. With 27 countries, there are $(27 * 26)/2 = 351$ dyads and $351 * 121 = 42{,}471$ observations.

4.2 Explanatory variables

To test H1, *LR_Dist* measures the difference in left-right score on a 10 point scale, at the time of the eight-week deadline for issuing an RO. Parliaments are assigned the seat-weighted left-right score of all parties in Parliament. The source data are expert judgments from ParlGov (Döring & Manow 2016). *LR_Dist* ranges from approximately 0 to 3.36.

To test H2, *GDP_Dist* measures differences in GDP per capita, expressed in €100,000 (Eurostat 2016). We take the value of the year in which the deadline for an RO fell. *GDP_Dist* ranges from approximately 0 to 0.87.

For H3, *EU_Dist* measures the difference in EU anti-pro score on a 10 point scale, at the time of the eight-week deadline for issuing an RO. Parliaments are assigned the seat-weighted left-right score of all parties in Parliament. The source data are expert judgments from ParlGov (Döring & Manow 2016). *EU_Dist* ranges from approximately 0 to 4.23.

Finally, to test H4, *Year* simply gives the year of the Commission's proposal. It ranges from 2010 to 2016. Table 1 gives a descriptive overview of the data. A correlation table is reported in the Appendix.

Table 1. Descriptive statistics, dyads of lower chambers 2010-2016.

Variable	N	Min	Max	Average	Source of underlying data
RO_Dyad	42,471	0	1	0.009	European Parliament (2017)
LR_Dist	42,471	0.000	3.363	0.650	Parlgov (Döring & Manow, 2016)
GDP_Dist	42,471	0.000	0.874	0.166	Eurostat
EU_Dist	42,471	0.002	4.226	1.060	Parlgov (Döring & Manow, 2016)
Year	42,471	2012	2016	2013	European Parliament (2017)
Geo_Dist	42,471	0.055	3.769	1.428	Distance.net
OOorNN	42,471	0	1	0.487	1 if both old or new member states
Visegrad	42,471	0	1	0.017	1 if both Visegrad (CZ, HU, PL,SK)
Contiguous	42,471	0	1	0.017	1 if common border

Notes: The number of observations represent 121 proposals that have received at least 1 RO.

We are aware that geographical distance may capture both regional correlation in preferences not accounted for by the main explanatory variables, as well as regional coordination. In order to control for

this, *Geo_Dist* measures the great circle distance between the capitals of the countries making up the dyad. It was computed on distance.net and expressed in 1000 kilometers. It ranges from 0.055 (i.e. 55 km) for Slovakia-Austria to 3.769 for Portugal-Cyprus.

A second concern to take into account is that *GDP_Dist* functions as a proxy of old versus new member states. Indeed, the old EU-15 countries are much richer than the most Central and Eastern European countries that have joined since 2004 (Toshkov 2017). This might lead us to incorrectly attribute the effect of co-issuance among the old and the new to differences in economic development. Hence we control for *OOorNN*, which is coded as (1) if the countries in a dyad are both old member states or both new member states and (0) otherwise.

Finally, given regional collaboration among the Visegrad countries discussed in the introduction, we control for *Visegrad*, a dummy which is equal to (1) for pairs of Visegrad countries and (0) otherwise. An additional control related to geography is *Contiguous*, a dummy which is (1) for countries with a common border.

4.3 Methods

Similar to Ringe et al. (2013), our analysis is dyadic and includes country effects. However, we consider co-issuance at the proposal level, rather than an aggregate measure of co-issuance. The reason is that we want to capture a potential time trend and control for time-varying measures of ideological distance. Given the binary nature of our dependent variable, we use logit or rare events logit regressions depending on the number of positive observations.

In order to control for countries' propensity to issue ROs and the resulting covariance among dyads with a shared country, we add country fixed effects to the model. These fixed effects control for two important elements. First, their propensity to issue ROs, which depends, for instance, on their level of Euroscepticism. Second, their tendency to have a lot of co-issued ROs across all dyads they are part of.

In sum, controlling for country fixed effects limits the potential problem of dyads not being completely independent. In addition, we cluster standard errors at the dyad level. Indexing the countries in a dyad as i and j and proposals as k, we estimate logit models of the following form:

$$logit\left(p\left(RO_{ijk}=1\right)\right)=\beta_0+\beta_1 LR_{ijk}+\beta_2 GDP_{ijk}+\beta_3 EU_{ijk}+\beta_4 Year_k+\gamma'\boldsymbol{X}+\alpha_i+\alpha_j$$

Where $p\left(RO_{ijk}=1\right)$ is the probability that countries *i* and *j* co-issued ROs on proposal k. Variables LR_{ijk}, GDP_{ijk}, and EU_{ijk} denote the distances between i and j on the dimensions left-right, GDP per capita, and anti-pro EU integration at the RO deadline for proposal k. $Year_k$ is the calendar year of proposal k. $\boldsymbol{X}$ is a vector of control variables depending on the specification, and α_i, α_j are the country fixed effects.

According to H1-H3, we expect more distant Parliaments on these dimensions to be less likely to co-issue ROs, i.e. $\beta_1, \beta_2, \beta_3 < 0$. H4 holds that Parliaments co-issue more over time, i.e. $\beta_4 > 0$.

5 Results

Table 2 reports the results of four baseline regressions. Model 1 only includes the variables related to H1-H4. Model 2 controls for geographical distance. For robustness, Model 3 adds the two control variables related to old and new member states and to the Visegrad countries. Model 4 also adds the control for contiguity.

Table 2. Logistic regression on the co-issuance of Reasoned Opinions.

Logit of RO_Dyad	**Model 1**	**Model 2**	**Model 3**	**Model 4**
LR_Dist	-0.349**	-0.348**	-0.345**	-0.382**
	(0.149)	(0.149)	(0.153)	(0.152)
GDP_Dist	-2.009***	-1.972***	-1.684***	-1.650***
	(0.387)	(0.407)	(0.507)	(0.496)
EU_Dist	0.030	0.029	0.024	0.022
	(0.070)	(0.070)	(0.070)	(0.070)
Year	0.085***	0.085***	0.083***	0.085***
	(0.030)	(0.030)	(0.029)	(0.030)
Geo_Dist		-0.025	-0.010	0.051
		(0.091)	(0.091)	(0.108)
OOorNN			0.049	0.047
			(0.126)	(0.125)
Visegrad			0.521*	0.352
			(0.291)	(0.346)
Contiguous				0.317
				(0.220)
Country FE	Yes	Yes	Yes	Yes
Constant	-173.238	-172.656	-169.29	-173.051
N	42,471	42,471	42,471	42,471
Clusters (dyads)	351	351	351	351

Notes: Robust standard errors clustered at the dyad level in brackets. *p<10%, **p<5%, ***p<1%.

Starting with Model 1, H1 on left-right distance is confirmed: dyads with more ideological left-right distance are significantly less likely to co-issue ROs. Similarly, H2 on distance in economic development is also confirmed: dyads with a bigger difference in GDP per capita are significantly less likely to co-issue ROs. Comparing the effect of left-right and economic distances, the latter are found to be more significantly associated with the co-issuance of ROs. The effect is also larger in magnitude (even when taking into account the more limited range of *GDP_Dist*).

Somewhat surprisingly, H3 is not confirmed: controlling for country fixed effects, dyads with similar anti-pro EU stances are not more likely to co-issue ROs. One explanation is that pro-integration Parliaments are unlikely to co-issue ROs on proposals that they think do not go far enough. Indeed, the stated goal of the EWS is to flag proposals that are not compliant with subsidiarity, i.e. infringe too much upon member states' competences, rather than the other way around. On the other hand, for dyads of Eurosceptic Parliaments the null finding suggests that, controlling for their higher propensity to issue

ROs through country fixed effects, they are not especially likely to co-issue these ROs with other Eurosceptic Parliaments.

Consistent with H4 of a positive time trend, *Year* has a statistically significant positive coefficient. Given that observations are limited to proposals with at least one RO, the positive coefficient can be interpreted as follows: over time, in situations where at least one Parliament issued an RO, other Parliaments became more likely to have done so as well. The positive coefficient is suggestive of increasing co-issuance as Parliaments learn to coordinate and adapt to the EWS. Over the period 2010-2016, they became less likely to be co-issuing with few other Parliaments. Alternatively, the Commission may have put forward proposals more likely to be opposed by several Parliaments.

Model 2 shows that the results of Model 1 are robust to controlling for geographical distance. The results of Model 3 are similar to Model 2, although the coefficient of *GDP_Dist* is both less significant and smaller in magnitude. The coefficient for *Visegrad* is significant at the 10% level, indicating that there is some statistical support for co-issuance among the Visegrad countries above and beyond what geographical and preference proximity would suggest.

Model 4 adds a further control variable: *Contiguous*. Although shared borders appear to be positively associated with co-issuance, the relationship is not significant. The coefficient for *Visegrad* is no longer statistically significant in this specification either. Hence support for abnormally high co-issuance among the Visegrad countries is not robust, controlling for all variables listed in Model 4.

Per Table 1, the baseline probability of a dyad co-issuing ROs on a given proposal is 0.8%. In order to judge the magnitudes of the estimated coefficients, the marginal effects should be compared against this baseline. Over the range of the other variables, for Model 2 the average marginal effects in percentage points are -0.3 for LR_Dist, -1.7 for GDP_Dist, and 0.07 for Year. Taking into account the range of these variables, their effects are in the same order of magnitude as the baseline probability, and hence substantial.

Figure 2 illustrates the magnitude of the effect of differences in economic development. It plots the predicted probabilities of RO_Dyad over the range of GDP_Dist, with 95% confidence intervals. The horizontal line indicates the baseline probability of a given dyad co-issuing ROs, equal to 0.9%. For countries with very similar levels of economic development, the predicted probability of co-issuing ROs on a given proposal is 1.3%. In contrast, for the dyads with the highest observed level of economic disparity, the predicted probability is only 0.3%.

Our results show that ROs submitted by national Parliaments do indeed go beyond simple subsidiarity complaints. Specifically, we find strong evidence that Parliaments with similar preferences, whether it be on the classic left-right or on the economic dimension, are more likely to co-issue ROs. Taken together, our findings that parliaments oppose Commission proposals based on policy substance, combined with the fact that they learn to coordinate their ROs over time has substantial implications: rather than a technical tool to monitor subsidiarity, the EWS has evolved to be a deeply political mechanism.

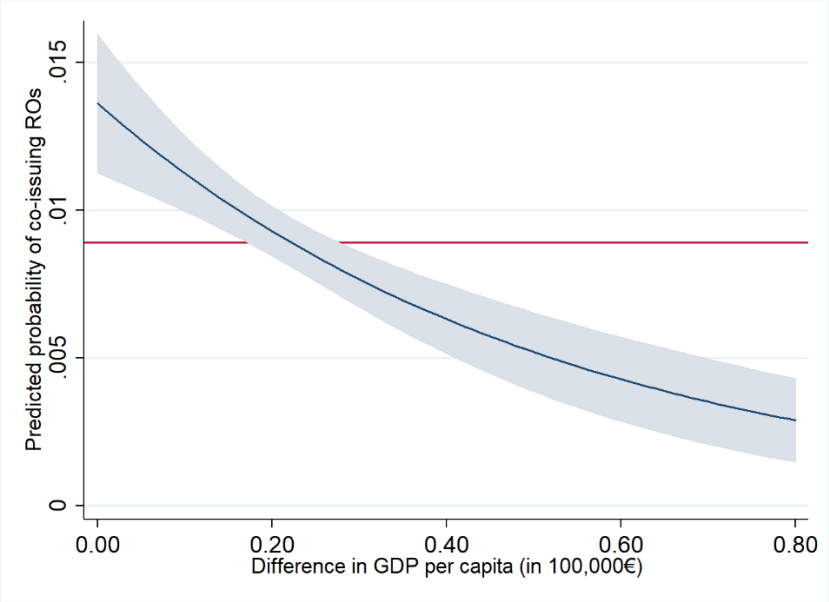

Figure 2. Predicted probabilities of co-issuing ROs over the range of levels of economic development. *Notes*: The figure presents the predicted probability of co-issuing ROs between two parliaments as functions of their similarity in economic development. The horizontal red line shows the baseline probability of co-issuing an RO. The predicted probabilities are based on Model 2 of Table 1.

6 Sensitivity analyses

In this section we study the robustness of our findings towards a number of additional concerns that readers may put forward. We present these exercises in Table 3. A first concern may be that, given the limited number of positive observations (only 378 out of 42,471), the logit estimates may be biased. Model 5 uses rare events logit (King & Zeng 2001a, 2001b) to allay this concern. Indeed, both the estimates and their significance levels differ only marginally from Model 2.

A second concern is that the findings are driven by Sweden, an outlier in terms of ROs: 62 over the period 2010-2016. The results of Model 6 show that this is not the case. With Sweden eliminated, 26*25/2=325 dyads and 278 positive observations remain for RO_Dyad. Also when disregarding Sweden, more distance on the left-right and economic dimensions is associated with significantly less co-issued ROs.

A third concern may be that our findings are driven by a few cases, notably the yellow cards mentioned in the introduction. To test for this, Model 7 omits the three yellow cards that have occurred to date. Spain and Slovenia have to be dropped from this analysis, since in this sample their lower chambers have not co-issued any ROs. The coefficient for left-right ideology relative to economic development is stronger in this specification. While the economic dimension is still significant

statistically and substantively, it seems to have played a somewhat more limited role in the proposals not triggering yellow cards.

Table 3. Set of robustness checks.

Logit of RO_Dyad	**Model 5** **Rare Events**	**Model 6** **Drop Sweden**	**Model 7** **Drop Cards**	**Model 8** **Include Upper**
LR_Dist	-0.346**	-0.324**	-0.547***	-0.264**
	(0.147)	(0.143)	(0.204)	(0.109)
GDP_Dist	-1.961***	-2.170***	-1.619***	-1.992***
	(0.479)	(0.511)	(0.592)	(0.340)
EU_Dist	0.028	0.035	0.013	-0.032
	(0.079)	(0.079)	(0.095)	(0.059)
Year	0.085***	0.133***	0.039	0.066***
	(0.025)	(0.034)	(0.041)	(0.025)
Geo_Dist	-0.028	-0.060	-0.038	-0.037
	(0.117)	(0.112)	(0.140)	(0.078)
Country FE	Yes	Yes	Yes	Yes
Constant	-172.908	-273.967	-78.784	-133.855
N	42,471	39,325	35,400	56,160
Clusters (dyads)		325	300	351

Notes: Robust standard errors clustered at the dyad level in brackets. *p<10%, **p<5%, ***p<1%.

The results of this model do not statistically support H4 concerning an upward trend, although the coefficient of *Year* is still positive. However, we would argue that excluding the three truly successful instances of coordination is not appropriate in testing for an upward trend in co-issuance.

Model 8 extends the analysis to include upper chambers. Here, *RO_Dyad* is 1 if at least one chamber of each country in the dyad issued an RO. Including upper chambers, there are 160 proposals with at least one RO. With 351 country dyads, this yields $351 * 160 = 56{,}160$ observations. Note that the left-right and EU anti-pro scores are actually for lower chambers. The results of this model again corroborate our main findings.

A final concern is that the strong result regarding the economic dimension is driven by the importance of proposals with economic content. Ideally, we would be able to repeat the analysis for all topic areas separately. However, as Table 4 shows, most topics have very few co-issued ROs, precluding separate estimation. Countries without ROs in a topic area have to be dropped for regressions restricted to that topic area.

The largest topic that does not appear obviously economic is Civil Liberties, Justice and Home Affairs, but it already requires dropping 8 countries. A rare events logistic regression with those countries dropped is reported in Table 5. Even for this topic, and with a much more limited number of observations, the coefficient for *GDP_Dist* is negative and significant at the 5% level.

The reason may be that, irrespective of their main topic, proposals with an economic impact may be especially salient and likely to trigger opposition in the form of ROs. To the extent that the economic impact of proposals correlates to the level of development, this may explain the importance of the economic dimension across topic areas. The EWS provides an opportunity to use data on proposals that later fail, perhaps because there was too much economic opposition to them: "economic interests would be much more obvious if we were able to look at proposals that never reach the ministers' negotiation table in the Council because they lack the necessary support to proceed to this stage of the decision-making process" (Bailer et al. 2015: 453).

Table 4. Co-issued ROs by EP Committee.

Committee	Topic	RO_Dyad	Observations
EMPL	Employment and Social Affairs	104	2,457
ECON	Economic and Monetary Affairs	78	8,775
LIBE	Civil Liberties, Justice and Home Affairs	70	4,563
TRAN	Transport and Tourism	40	5,967
ENVI	Environment, Public Health and Food Safety	25	3,861
ITRE	Industry, Research and Energy	21	4,563
FEMM	Women's Rights and Gender Equality	15	351
AGRI	Agriculture and Rural Development	11	3,510
IMCO	Internal Market and Consumer Protection	7	3,510
JURI	Legal Affairs	7	4,212
CONT	Budgetary Control	0	351
REGI	Regional Development	0	351
	Total	378	42,471

Table 5. Topic regression.

Rare Events Logit of RO_Dyad	Model 9 LIBE only
LR_Dist	0.241
	(0.355)
GDP_Dist	-3.676**
	(1.472)
EU_Dist	-0.150
	(0.185)
Constant	-172.908
N	2,223

Note: The model includes (but not shown) the variable *Year* and the control variable *Geo_Dist*, as well as country fixed effects. Robust standard errors clustered at the dyad level in brackets. *p<10%, **p<5%, ***p<1%.

7 Conclusion

Under the Early Warning System, national Parliaments can issue Reasoned Opinions against the Commission's legislative proposals. If one third of Parliaments issue an RO, a yellow card is triggered and the Commission has to reconsider the proposal. In the period 2010-2016, only three yellow cards have been issued. This article moves the literature forward by a quantitative analysis of co-issuance among dyads of national Parliaments. The analysis covers all ROs issued by lower chambers in the period 2010-2016 (Croatia excluded), and is conducted at the dyad-proposal level.

While the EWS is technically only about subsidiarity, case-based evidence indicates that Parliaments also use it to indicate opposition to the substance of a proposal. Most notably, in the case of the revision of the posted workers directive, several Eastern European countries explicitly referred to the adverse economic impact they expected from the proposal due to their different level of economic development. To study whether substance matters for the co-issuance of ROs more systematically, this article tests and finds evidence for dimensions of conflict in the EWS.

Four hypotheses are evaluated. Hypotheses one to three are about dyads with similar preferences on likely dimensions of conflict being more likely to co-issue ROs. This is operationalized by calculating distances on the dimensions left-right, economic development, and anti-pro EU integration. The fourth hypothesis is that there is an upward trend in co-issuance over time. The regressions control for geography and for country fixed effects affecting the baseline propensity to issue ROs.

Considering the three main hypothesized dimensions of conflict, similar levels of economic development appear to be more significant in predicting the co-issuance of ROs than similarity on the left-right dimension. Although Euroscepticism has been found to affect the probability of issuing ROs, controlling for country fixed effects the EU integration dimension does not seem to affect co-issuance. So although Eurosceptic Parliaments issue more ROs, they seem to co-issue them along economic or left-right lines. This reinforces the conclusion that the EWS is about substance as much as subsidiarity.

The importance of economic development as a dimension of conflict in the EWS resonates well with recent studies on the dimensions of conflict in the Council (Bailer et al. 2015). Economic development can affect preferences across proposals because it correlates with being a net receiver or contributor of EU funds, and with regulatory adjustment costs. While limited data preclude running the analysis for most individual topic areas, we find that economic development is the main dimension of conflict even in the topic area of Civil Liberties, Justice and Home Affairs. We speculate that irrespective of their main topic, proposals that have a differential impact on countries with different levels of development may be especially likely to trigger opposition in the form of ROs.

A set of additional controls and robustness checks supports these findings. In particular, controlling for the aforementioned variables, there is no significant evidence that old/new member states co-issue more with their peers. However, controlling for all of the above, being part of the Visegrad countries does have a significantly positive effect on co-issuance. This is probably related to informal coordination

in the margin of Visegrad meetings. Since the effect is not robust, not too much should be read into it. In terms of specifications, the results are robust to using a rare events logit regression, dropping outlier Sweden, dropping the three yellow cards, and including upper chambers.

Finally, except when excluding the yellow cards from the analysis, the data is consistent with an upward trend in co-issuance. Confirming case-based evidence of transnationalization, this suggests that Parliaments are indeed learning to coordinate and that the EWS may become more effective in the future. If the trend continues, one can expect more yellow cards to be issued over time, although none have materialized since the period under study. Future research will tell whether this constitutes a temporary break in the upward trend, or a sign that coordinated action will remain rare.

References

Auel, K. & Neuhold, C. (2017). Multi-arena players in the making? Conceptualizing the role of national parliaments since the Lisbon Treaty. *Journal of European Public Policy* 24(10): 1547–1561.

Auel, K., Rozenberg, O. & Tacea, A. (2015). Fighting Back? And, if So, How? Measuring Parliamentary Strength and Activity in EU Affairs. In C. Hefftler, C. Neuhold, O. Rozenberg & J. Smith (eds.), *The Palgrave Handbook of National Parliaments and the European Union*. Basingstoke: Palgrave Macmillan.

Bailer, S., Mattila, M. & Schneider, G. (2015). Money Makes the EU Go Round: The Objective Foundations of Conflict in the Council of Ministers. *Journal of Common Market Studies* 53(3): 437–456.

Baller, I. (2017). Specialists, party members, or national representatives: Patterns in co-sponsorship of amendments in the European Parliament. *European Union Politics* 18(3): 469–490.

Christiansen, T., Högenauer, A.L. & Neuhold, C. (2014). National parliaments in the post-Lisbon European union: Bureaucratization rather than democratization? *Comparative European Politics* 12(2): 121–140.

Cooper, I. (2015). A yellow card for the striker: national parliaments and the defeat of EU legislation on the right to strike. *Journal of European Public Policy* 22(10): 1406–1425.

Cooper, I. (2018). National parliaments in the democratic politics of the EU: the subsidiarity early warning mechanism, 2009–2017. *Comparative European Politics*.

Döring, H. & Manow, P. (2016). Parliaments and governments database (ParlGov): Information on parties, elections and cabinets in modern democracies. *www.Parlgov.org*.

European Parliament. (2017). Protocol 2 statistics. *Directorate for Relations with national Parliaments*.

Retrieved 7 August 2017, from http://www.europarl.europa.eu/relnatparl/en/about/subsidiarity.html

Eurostat. (2016). National Accounts and Population data. Retrieved 22 December 2016, from http://ec.europa.eu/eurostat/data

Fromage, D. & Kreilinger, V. (2017). National Parliaments' Third Yellow Card and the Struggle over the Revision of the Posted Workers Directive. *European Journal of Legal Studies* 10(1): 125–160.

Gattermann, K. & Hefftler, C. (2015). Beyond Institutional Capacity: Political Motivation and Parliamentary Behaviour in the Early Warning System. *West European Politics* 38(2): 305–334.

Hagemann, S. (2007). Applying ideal point estimation methods to the Council of Ministers. *European Union Politics* 8(2): 279–296.

Hix, S., Noury, A. & Roland, G. (2006). Dimensions of Politics in the European Parliament. *American Journal of Political Science* 50(2): 494–511.

Huysmans, M. (2019a). Euroscepticism and the Early Warning System. *Journal of Common Market Studies* 57(3): 431–447.

Huysmans, M. (2019b). Enlargement and exit: The origins of Article 50. *European Union Politics* 20(2): 155–175.

Kaeding, M. & Selck, T.J. (2005). Mapping out political europe: Coalition patterns in EU decision-making. *International Political Science Review* 26(3): 271–290.

Kiiver, P. (2012). *The Early Warning System for the Principle of Subsidiarity: Constitutional Theory and Empirical Reality*. Routledge.

King, G. & Zeng, L. (2001a). Logistic Regression in Rare Events Data. *Political analysis* 9(2): 137–163.

King, G. & Zeng, L. (2001b). Explaining Rare Events in International Relations. *International Organization* 55(3): 693–715.

Knutelská, V. (2011). National parliaments as new actors in the decision-making process at the European level. *Journal of Contemporary European Research* 7(3): 327–344.

Malang, T., Brandenberger, L. & Leifeld, P. (2017). Networks and Social Influence in European Legislative Politics. *British Journal of Political Science* (Forthcoming): 1–24.

Mühlböck, M. & Tosun, J. (2018). Responsiveness to Different National Interests: Voting Behaviour on Genetically Modified Organisms in the Council of the European Union. *Journal of Common Market Studies* 56(2): 385–402.

Pintz, A. (2015). National Parliaments in the European Union Collective Action under the Early Warning Mechanism. *Politique européenne* 49(3): 84–114.

Rasmussen, M.B. & Dionigi, M.K. (2018). National Parliaments' Use of the Political Dialogue: Institutional Lobbyists, Traditionalists or Communicators? *Journal of Common Market Studies* 56(5): 1108–1126.

Raunio, T. (2009). National Parliaments and European Integration: What We Know and Agenda for Future Research. *Journal of Legislative Studies* 15(4): 317–334.

Ringe, N., Victor, J.N. & Gross, J.H. (2013). Keeping your friends close and your enemies closer? Information networks in legislative politics. *British Journal of Political Science* 43(3): 601–628.

Sprungk, C. (2013). A New Type of Representative Democracy? Reconsidering the Role of National Parliaments in the European Union. *Journal of European Integration* 35(5): 547–563.

Toshkov, D.D. (2017). The impact of the Eastern enlargement on the decision-making capacity of the European Union. *Journal of European Public Policy* 24(2): 177–196.

Van Kersbergen, K. & Verbeek, B. (2007). The Politics of International Norms: Subsidiarity and the Imperfect Competence Regime of the European Union. *European Journal of International Relations* 13(2): 217–238.

Williams, C.J. (2016). Issuing Reasoned Opinions: The Effect of Public Attitudes Towards the European Union on the Usage of the 'Early Warning System'. *European Union Politics* 17(3): 504–521.

Appendix

Table A1. Proposals where lower chambers in both countries issued an RO, 2010-2016 (Croatia excluded).

	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK
AT	3																										
BE		3																									
BG			6																								
CY				5																							
CZ	1		3		9																						
DE					1	9																					
DK		1	1		3	1	8																				
EE			1		1		1	2																			
EL					1		1		3																		
ES		1	1		1	1			1	12																	
FI		1					1				3																
FR						2						3															
HU			1	1	4	1	1	1		1			6														
IE			1	1			2				1		1	8													
IT		1			1		1		1	2					5												
LT			1		1		1	1			1		1	1		10											
LU	1	1					3				1			2		4	17										
LV		1	1		1		2	1		1	1		1			1	1	3									
MT		1	1	2			3			1	1		1	5			4	2	14								
NL	1	1	1	4	2		4			1	2	1	1	5		3	5	1	5	23							
PL		1	2		3		3	1		1	1		2	1		3	6	3	3	3	14						
PT		1			1		2		1		1	1			1		1	1	2	2	1	4					
RO			2	1	5	1	2	1	1	1			5	2	1	1		1	2	3	3	1	8				
SE		2	2	3	3	2	7		1	1	3	1	1	7	2	6	7	2	9	14	6	3	4	62			
SI				1									1	1					1	1			1	1	1		
SK			2		3		1	1				1	3	1		1		1	1	2	3	1	4	3		6	
UK		1	1	1	1	2	2				1		1	2			1	1	3	5	3	1	3	10	1	1	16

Table A2. Correlation table.

Variable	**RO~**	**LR~**	**GDP~**	**EU~**	**Year**	**Geo~**	**OO~**	**Vis~**	**Con~**
RO_Dyad	1.00								
LR_Dist	-0.01	1.00							
GDP_Dist	0.00	-0.04	1.00						
EU_Dist	0.02	-0.04	-0.05	1.00					
Year	0.01	0.23	0.06	-0.05	1.00				
Geo_Dist	-0.01	-0.02	-0.02	0.00	-0.00	1.00			
OOorNN	0.02	-0.09	-0.35	-0.00	0.00	-0.18	1.00		
Visegrad	0.02	0.07	-0.12	-0.06	-0.00	-0.18	0.14	1.00	
Contiguous	0.00	0.08	-0.12	-0.07	0.00	-0.43	0.18	0.25	1.00