

Table of Contents

Acknowledgements	v
Introduction	1
I. Existing Scholarship on the Subsidiarity Principle and National Parliaments	2
II. Research Approach.....	5
III. Structure	6
1. The Subsidiarity Principle in the EU Treaties	9
I. Introduction	9
II. Characteristics of the Subsidiarity Principle.....	10
A. Origin of the Subsidiarity Principle	10
B. Subsidiarity in the German Basic Law.....	11
III. Subsidiarity in Other Legal Systems	14
A. Subsidiarity in Switzerland	15
B. Subsidiarity in the US.....	15
IV. Subsidiarity in the EU Treaties	18
A. Historical Development	18
B. Concepts of Subsidiarity	20
C. Guidelines for the Application of the Subsidiarity Principle	22
D. Procedural Subsidiarity	24
E. The Relationship Between the Principles of Article 5 TEU.....	28
V. Subsidiarity in the Court of Justice	30
A. The Limits of CJEU Jurisprudence on the Subsidiarity Principle	30
B. Post-Lisbon Subsidiarity Case Law.....	32
C. Subsidiarity Action	37
VI. Reasons for Introduction of the EWS	37
A. ‘Competence Creep’.....	37
B. ‘Democratic Deficit’.....	38
C. Alternative Proposals.....	40
VII. Conclusion.....	42
2. The Involvement of National Parliaments and the EWS	45
I. Introduction	45
II. The Growing Role of National Parliaments in the EU Treaties	45
A. The Maastricht Treaty	45
B. The Treaty of Amsterdam.....	46
C. The Constitutional Treaty	47
D. The Treaty of Lisbon.....	47

III.	The Design of the EWS	49
A.	The Competences of National Parliaments Under Protocol No 2	49
B.	The Subsidiarity Review from the Perspective of EU Institutions	52
i.	The European Parliament	52
ii.	The Council	54
iii.	The Committee of the Regions.....	55
C.	The Application of the EWS.....	56
IV.	The ‘Barroso Initiative’	59
V.	The EWS in Interparliamentary Cooperation	63
A.	The Conference of Speakers of European Union Parliaments	63
B.	COSAC	65
C.	National Parliaments’ Representatives in Brussels	67
D.	Best Practices of Interparliamentary Cooperation in the EWS.....	68
VI.	Conclusion	68
3.	The Scope and Application of the EWS	71
I.	Introduction.....	71
II.	Scope of the Reasoned Opinions Under Protocol No 2	72
III.	Comparison of the First Three ‘Yellow Cards’.....	77
A.	The First ‘Yellow Card’	78
B.	The Second ‘Yellow Card’	81
C.	The Third ‘Yellow Card’	86
D.	Compatibility of the Proposals with the Subsidiarity Principle	90
IV.	Consequences of the ‘Yellow Cards’	91
V.	Observations on the Practice of the EWS.....	94
VI.	Conclusion	97
4.	Design of the Subsidiarity Review at the National Level.....	99
I.	Introduction.....	99
II.	Institutional Evolution of National Parliaments.....	100
III.	Analysis of Constitutional Jurisprudence.....	101
A.	Germany	101
B.	France	103
C.	Poland.....	103
IV.	Overview of Scrutiny Types	104
V.	Comparison of Procedures	108
A.	The Initial Detection of Subsidiarity Breaches.....	108
B.	The Role of the Government in Subsidiarity Review.....	110
C.	The Role of the Plenary	111
D.	The Accommodation of Regional Parliaments’ Views	114
VI.	The Impact of the Ex Ante Subsidiarity Review Design on the Number of Reasoned Opinions	117
VII.	Conclusion	121
5.	The EWS Within National Political Systems	123
I.	Introduction.....	123
II.	Government, Majority and Opposition in EU Affairs.....	124

III.	Research Approach.....	126
A.	Justification of the Sample Choice.....	126
B.	Data Collected on Debates and Votes in the EWS	127
i.	The UK	127
ii.	Germany	134
iii.	Poland.....	139
iv.	Belgium.....	145
IV.	Analysis of the Data.....	149
A.	Independence of Parliaments from the Governments.....	149
B.	Division Between the Majority and Opposition on Subsidiarity Issues.....	152
C.	Reflection of Regional Interests	154
i.	Germany	154
ii.	Belgium.....	156
iii.	The UK	156
V.	Analysis of the Debates	157
A.	The ‘Debating’ and ‘Working’ Features of Parliaments in the EWS.....	157
B.	Motivation of National Parliaments	159
VI.	Conclusion.....	162
6.	Principle of Conferral Under Protocol No 2.....	165
I.	Introduction	165
II.	The Question of EU Competence	166
A.	The ‘New Order of Competences’ in the Lisbon Treaty and its Assessment	166
B.	Links Between the Principles of Conferral and Subsidiarity.....	167
III.	Reasoned Opinions Concerning Violation of the Principle of Conferral.....	169
A.	The Area that the Draft Legislative Act Regulates Falls Outside the Treaty’s Legal Basis	170
B.	The Draft Legislative Act Pursues a Different Objective from that Indicated in the Legal Basis	171
C.	List of the Areas of ‘Exclusive National Competence’	172
IV.	Special Cases: Article 114 and Article 352 TFEU.....	174
V.	Case Study: The ‘Yellow Card’ on the Right to Strike Proposal	177
A.	The Legal Basis of the Proposal	177
B.	The Reasoned Opinions of the National Parliaments	178
C.	Outcome.....	179
VI.	Conclusion.....	180
7.	Subsidiarity and the Delegation of Power in the EU	183
I.	Introduction	183
II.	Delegated and Implementing Acts	184
III.	Case Study of the Proposal for a Tobacco Products Directive	187
A.	The Commission Proposal.....	187
B.	Reasoned Opinions of National Parliaments	188
i.	Essential Elements.....	188
ii.	Duration and Number of Delegations.....	190
iii.	Delegation by Means of Implementing Acts	191

C.	The Commission's Replies.....	193
i.	Commission Replies Regarding the Characteristics of Delegations.....	193
ii.	Commission Replies Regarding the Merits of Delegations.....	194
D.	Evaluation of the Exchange Between National Parliaments and the Commission	197
E.	The Court's Assessment of the New Tobacco Products Directive.....	197
IV.	Assessment.....	198
V.	Conclusion.....	200
8.	Subsidiarity and Fundamental Rights Legislation.....	203
I.	Introduction	203
II.	Fundamental Rights in the EU Draft Legislative Acts	204
III.	Fundamental Rights in the Reasoned Opinions.....	205
A.	Commission Proposals Without a Fundamental Rights Objective.....	206
B.	Commission Proposals with Fundamental Rights Protection as One of the Objectives.....	208
IV.	Case Study of a 'Genuine' Fundamental Rights Proposal	210
A.	Divergent Standards at National Level	210
B.	The Commission Proposal.....	212
C.	Reasoned Opinions of National Parliaments	214
D.	The Commission's Reply.....	217
E.	Current Proceedings at the EU Level.....	218
F.	Assessment	219
V.	Scrutiny of Fundamental Rights Proposals Within the EWS.....	221
VI.	Conclusion.....	223
	Conclusion.....	225
I.	Findings of the Book.....	225
II.	The EWS as an Answer to the 'Democratic Deficit' and 'Competence Creep'?	227
A.	'Democratic Deficit'.....	227
B.	'Competence Creep'.....	230
III.	Outlook: Reform Proposals	232
A.	'Green Card'	233
B.	'Red Card'	234
C.	Institutional Reforms	236
D.	'Red Card Light'	237
E.	Using the Existing Tools of Scrutiny.....	238
	Bibliography.....	241
	Index	253