The informational value of the EU's Early Warning System

The EU's Early Warning System, best known for the 'yellow cards' that can be issued by national parliaments to EU legislative proposals, has been the subject of considerable debate since it was introduced by the Treaty of Lisbon. Drawing on a new study, **Philippe van Gruisen** *and* **Martijn Huysmans** *demonstrate the informational value of the system for policymakers and the general public.*

The EU's Early Warning System allows national parliaments to submit reasoned opinions to the European Commission if they believe a legislative proposal is not in line with the principle of subsidiarity. In reality, parliaments also send these opinions if they simply dislike a proposal. If enough parliaments send such an opinion, the Commission receives a 'yellow card' and needs to reconsider its proposal.

The main criticism of the system is twofold. First, only three yellow cards have been materialised since its introduction in 2010. Second, two of these yellow cards were simply ignored by the Commission. The only time the Commission withdrew its proposal was on the 2012 Monti II proposal. However, the Commission explicitly stated that the proposal was not withdrawn because of a subsidiarity breach, but because it was 'unlikely to gather the necessary political support'. This suggests that the Commission used these opinions to anticipate failure of the proposal in the Council. By doing so, it arguably saved precious time and resources being spent on a proposal that was unlikely to pass anyway.

Anticipating failure in the Council

In a recent study, we examine the informational value of opinions by parliaments for the Commission more broadly. We present a theory and a model that explain why the Commission withdraws some proposals, as it did under the Monti II regulation, while it does not withdraw others.

The model has simple ingredients: the Commission has a prior belief about how much contestation a proposal is likely to trigger in the Council. Under the Early Warning System, the Commission can update this prior belief by observing reasoned opinions sent by parliaments, if any. Whether or not these parliamentary opinions then provide the Commission with more information crucially depends on the correlation of the opinions with the votes by government representatives in the Council.

To empirically test the model, we matched the governments' formal votes and policy statements with those of their parliaments for all proposals introduced by the Commission between January 2010 and December 2013. We found that governments are, on average, five times more likely to oppose the Commission's proposal if the government's parliament has submitted a reasoned opinion. It is important to stress that this effect merely constitutes a lower bound because there is no information available on failed proposals. Calibrating the parameters of our theoretical model on the data, we simulated the Commission's posterior belief that the proposal will receive the required majority in the Council, as shown below.

Figure 1: Posterior probability of policy passing as a function of reasoned opinions, for different decision thresholds
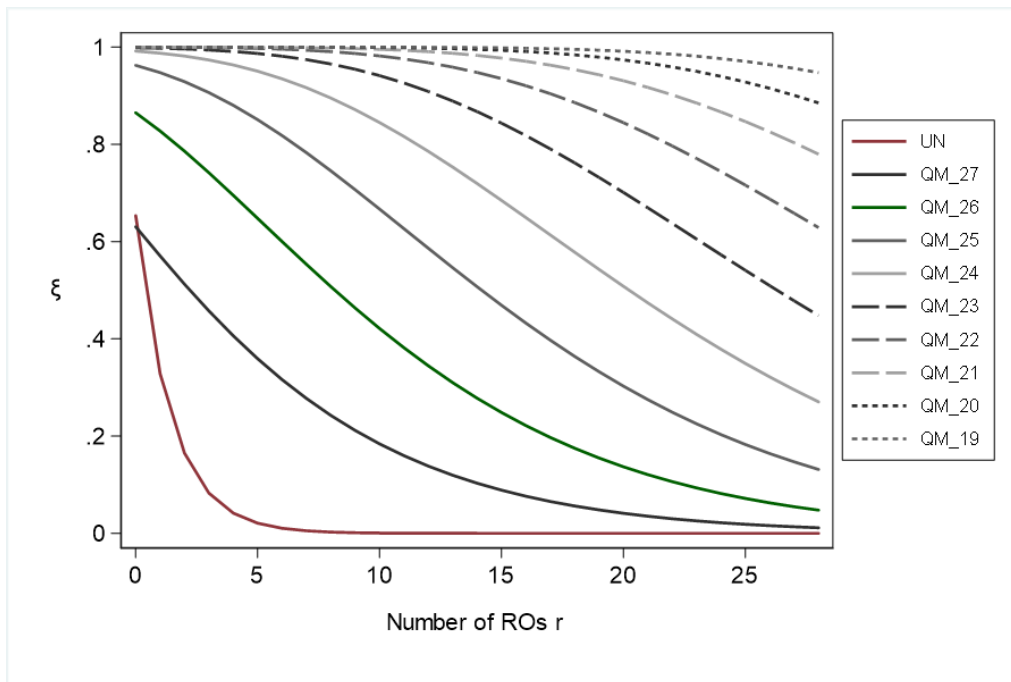
Note: **The calibrated model illustrates how the Commission may update its belief on observing number of reasoned opinions. The curves reflect different majority thresholds. QM: qualified majority; ROs: reasoned opinions; UN: unanimity. For more information see the authors' [accompanying study](#).**

The red curve shows how likely the proposal is to receive unanimous support by the governments, conditional on the number of reasoned opinions submitted by national parliaments. Clearly, the more opinions, the less the Commission believes that its proposal will get approved. The model also depicts simulations for a qualified majority decision rule. Since the *de facto* majority requirement is much higher than the *de jure one*, we simulated various QMV thresholds. The green line, for instance, shows the Commission's belief of adoption with a 90 percent majority rule.

The Commission's decision to withdraw a proposal

Now we are able to regress the Commission's decision to withdraw its proposal on its posterior belief, controlling for a number of other important determinants. We find the Commission is more likely to withdraw if it anticipates more opposition, that is, if the posterior probability of passing is low, as shown in Figure 2. Moreover, the Commission is less likely to withdraw proposals of high salience and that have low costs of garnering the necessary majority. Hence, the model can also explain why the Commission sometimes withdraws proposals that receive few reasoned opinions, while it does not withdraw others that triggered a yellow card, as the posted workers directive demonstrated.

Figure 2: The likelihood of withdrawal as a function of the Commission's posterior belief

(a) Posterior probability of passing ξ
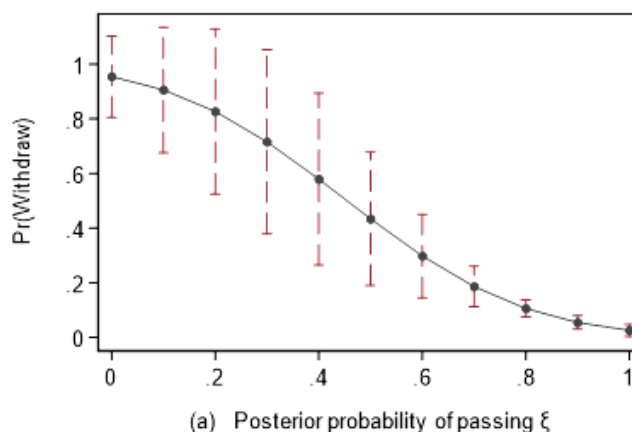
Note: **For more information see the authors' [accompanying study](#).**

Conclusion and implications

Our results have a number of implications for EU policymaking and the much-contested Early Warning System. First, the Early Warning System has important informational value. Policymaking is arguably costly for the Commission. Think about time and resources spent in monitoring Council negotiations, the opportunity cost of working on other legislative issues, or potential time spent on monitoring implementation afterwards. As such, the Commission benefits from extra information if this may lead to the conservation of scarce resources and precious negotiating time.

Second, while we have stressed the informational value for the Commission, it has implications for a variety of other actors that have an interest in EU policy. Whether it be other EU institutions such as the European Parliament, or policymakers, interest groups and voters more broadly. For instance, like the Commission, interest groups can assess how likely it is that a proposal will pass, and organise their lobbying activities accordingly. Similarly, reasoned opinions may allow voters to infer the position of their governments in Council negotiations.

Third, these results are important for research on decision-making in the Council of the EU. The Council is still an opaque institution. Member state governments are well-known to hide their policy preferences for a variety of reasons. Reasoned opinions from national parliaments can then provide an alternative source of information for scholars who have made it their primary objective to unravel parts of this black box.

For more information, see the authors' accompanying article at [European Union Politics](#)

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