



Europe must deliver at the level closest to the citizens

Subsidiarity: Past, present and future

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Michael Schneider

Abstract

Subsidiarity is a core value of the European People's Party. It has been incorporated in the EU treaties to ensure that decisions are taken as closely as possible to the citizens. At a time when citizens are increasingly putting Europe's democratic legitimacy into question, it is essential to place this principle at the heart of discourse on the EU. The Task Force on Subsidiarity, Proportionality and Doing Less More Efficiently, which was set up by European Commission President Jean-Claude Juncker in November 2018, has identified a 'new way of working'. It gives local, regional and national authorities a stronger voice in EU policymaking, with the aim of improving the quality and effectiveness of legislation. If implemented by the different institutions, it will both ensure that EU legislation adds value and lead to the member states and their regions and cities taking greater ownership of EU decisions. And these developments, in turn, will help reconnect Europe with its citizens.

Keywords

Subsidiarity, Committee of the Regions, Christian Democracy, EPP, Local, Regional

Introduction

The EU's credibility has suffered recently. The Union has been successfully moving from crisis to crisis by stemming the influx of migrants and safeguarding the euro. But it would appear that citizens do not find the solutions convincing. Moreover, one finds among the people of the EU a growing perception of a democratic deficit or disconnect, and a feeling that there is a lack of accountability in decision-making. On the other hand,

Corresponding author:

M. Schneider, European Committee of the Regions, Rue Belliard 101, B-1040, Brussels, Belgium.
Email: michael.schneider@lv.stk.sachsen-anhalt.de



trust in local and regional authorities remains high (European Commission 2018c). This explains the European People's Party's (EPP) vision of an efficient and democratic Union that is closer to its citizens. The party pleads for 'greater transparency and more involvement at the level of regions and local communities, which are represented by the European Committee of the Regions' and suggests that 'EU institutions should also systematically reach out to regional and municipal authorities, which on the whole enjoy greater trust from citizens' (EPP 2017, 12–13). The EPP's notion of a Europe that secures our future also clearly identifies the need to enhance subsidiarity and solidarity, as these are principles which function as guardians of the treaties.

The challenge is to bring Europe closer to the citizens. The EU needs to put citizens at the centre of its policies. The subsidiarity principle¹ provides the perfect framework for this as it ensures that decisions are taken at the most appropriate level: European, national, regional or local. The principle of subsidiarity must thus be the yardstick for the democratic legitimacy of EU legislation since it is the main tool for analysing and clarifying the role of the different levels of governance in shaping policies which benefit all EU citizens. Subsidiarity has to be communicated in a language that citizens understand. It also needs to move beyond narrow theoretical legal debates and be imbued with new life. This article argues that there is a new way of working on subsidiarity that provides an opportunity for all players involved in the EU decision-making process to produce better, more acceptable and more citizen-friendly legislation.

Subsidiarity as a core EPP value and guiding EU principle

The term 'subsidiarity' was invented by the forefathers of the EPP political family in the framework of Christian Social Teaching in the nineteenth century. The principle of subsidiarity was first introduced in 1978 in the EPP Political Programme, where it was stated that 'political power should be decentralised wherever possible' (Tensen et al. 2014). Since then, the principle of subsidiarity has been included in all EPP documents on core values. According to the late Wilfried Martens, nine-time Belgian prime minister and a former president of the EPP, 'It is so important to our political family because, like few other values, it distinguishes us from most of our competitors' (Martens 2012). Indeed, subsidiarity is a clear example of a concept that originates from Christian Democratic thinking on the dispersion of state power by decentralisation. Having been translated into policy and accepted as a general principle in EU law, it has over the years gone from inspiring the EPP to becoming a guiding principle of EU action.

Subsidiarity first appeared in the EU treaties in 1986, when the Single European Act came into effect. At that point it only concerned environmental policy. It became a general principle in EU law in 1993 with the entry into force of the Maastricht Treaty, which simultaneously created the European Committee of the Regions (CoR) and the modern EU. It is no coincidence that both advances occurred at the same time. The two must be viewed together. The introduction of subsidiarity reflected the concerns of the German states (the *Länder*) about centralisation (Follesdal 1998), whereas the creation of the

CoR brought the EU closer to its citizens and gave regions and cities, albeit in a consultative role, a direct voice in EU decision-making.

These developments were confirmed and further reinforced by the Lisbon Treaty, which introduced a subnational dimension to subsidiarity. It explicitly acknowledges that certain objectives may be best achieved at the local and regional level. Regional parliaments with legislative powers were included in the ‘Early Warning System’, which was established to monitor application of the principle of subsidiarity. (It is true that these parliaments were granted only a consultation role and were not given the direct voting powers accorded to national parliaments.) In addition, the CoR was empowered to bring action to annul EU legislation that did not comply with the principle of subsidiarity. In this way the Committee moved from being a promoter of subsidiarity to becoming a fully fledged guardian of the principle.

From the outset, the CoR has seen subsidiarity as an instrument of proximity, efficiency and accountability. When the principle of subsidiarity is applied correctly, decisions are taken as closely as possible to citizens and at the level of government where the intended policy objectives can be achieved most effectively. The effective application of the principle thus enhances the democratic legitimacy of European governance, helps to achieve better regulation and increases public acceptance of decisions.

For these reasons the CoR is committed to ensuring that this principle is respected and effectively applied. It has invested in creating a culture of subsidiarity by engaging with regional parliaments, and with local and regional authorities and their associations. This it does mainly through its Subsidiarity Monitoring Network (European Committee of the Regions 2019b) and REGPEX (Regional Parliament Exchange) online exchange platform (European Committee of the Regions 2019a). Through the organisation of its biennial Subsidiarity Conferences, high-level interinstitutional symposia, it has promoted dialogue with all relevant EU institutions on the principle, its monitoring and its application. Over time it has gradually developed its expertise in subsidiarity through the work of its Subsidiarity Steering Group, which is supported by an expert group. The CoR sees the need to move ahead with subsidiarity. It seeks to ensure that better regulation and subsidiarity do not remain abstract concepts: they need to be revitalised.

Rethinking subsidiarity

Despite all the advances in subsidiarity that have been made in the treaties, there is no consensus on what subsidiarity means. Thus, it regularly comes up in the EU debate, particularly whenever the EU’s legitimacy and its political project are called into question. Having placed subsidiarity at the core of his Commission, and following balance of competence reviews in the UK and the Netherlands, European Commission President Jean-Claude Juncker elevated the matter to the institutional level. He set the Commission on the path of being ‘big on big things, and small on small things’ (Juncker 2014). And in his 2017 State of the Union speech, he announced the creation of a task force on subsidiarity and proportionality.

The Task Force on Subsidiarity, Proportionality and Doing Less More Efficiently, with a term limited to half a year, was to (1) recommend ways in which the Union's institutions and bodies can apply the principles of subsidiarity and proportionality more effectively, (2) identify policy areas where work could be re-delegated to the member states and (3) look for ways to better involve local and regional authorities in policymaking and the implementation of EU policies.

One of the special features of the Task Force was its new way of approaching subsidiarity, which involved combining three quite different yet complementary elements:

1. the analysis of a possible return of competences, in line with the Juncker Commission's efforts to be 'big on big things, and small on small things';
2. the recurring debate on how to improve the governance of subsidiarity;
3. a much broader element, looking at ways to increase the legitimacy and efficiency of EU policymaking via the greater involvement of local and regional authorities.

Both this combination and the short period of time the Task Force had to complete its deliberations allowed for a constructive approach to emerge. Subsidiarity was looked at pragmatically and not simplistically—as being about more or less Europe, let alone about 'renationalisation'. And so understood, it was put at the heart of the debate.

The six Task Force members,² three representing national parliaments and three the CoR—the European Parliament did not take up the invitation to participate—worked intensively under the chairmanship of European Commission First Vice-President Franz Timmermans. The Task Force produced a final report containing 5 broad 'conclusions', 9 'recommendations', and 36 'implementation actions' to be taken by different institutions: national parliaments; national, regional and local authorities; the European Parliament; the Council; the CoR; and the European Commission (Task Force on Subsidiarity 2018).

Perhaps unexpectedly—but from a political perspective, very significantly—the Task Force itself, as well as the contributions received from others, ruled out repatriating to member states any EU competences or policy areas, in whole or in part. Rather, the Task Force concluded that EU-level action added value in all existing areas of activity. It states in its report that, rather than discussing the re-delegation of policy areas to the member-state level, it is important (1) to address 'weaknesses' in the current policymaking process by involving the national, regional and local levels more closely and (2) to develop a more 'active' and shared understanding of subsidiarity in order to increase the effectiveness and legitimacy of EU action (Task Force on Subsidiarity 2018, 7).

A new way of working

The Task Force took a completely new approach to its work, turning the discussion on subsidiarity *vom Kopf auf die Füße* (to borrow a phrase from Karl Marx)—that is, it turned the discussion the right way up again. Instead of theoretical legal discussions, it

asked itself the practical question, How can the ideas of subsidiarity and proportionality have a better effect, in concrete terms, on the different phases of the political decision-making process? This is how the Task Force arrived at a ‘new way of working’. This new approach brings together certain facets of subsidiarity that have been discussed since the principle was first introduced in the treaties and truly innovative ideas on how to operationalise the principle and make EU legislative processes more legitimate.

The innovative ideas have been carried over into the Task Force’s recommendations. These ideas cover five main objectives:

1. *To ensure the systematic participation of all levels—national, regional and local—in a tailor-made way in the making and shaping of EU policies.* The European Commission should raise awareness of opportunities to contribute to policy formulation. It should also promote the participation of local and regional authorities by designing specific questionnaires, providing greater feedback on these authorities’ views and making these views more visible.
2. *To carry out systematic impact assessments and collect evidence of the added value of both the European Commission’s legislative processes and the negotiation phase with co-legislators.*
3. *To have all stakeholders reach a common understanding of subsidiarity and to intensify cooperation between the EU institutions and the other levels on the basis of a common assessment grid.* The consistent use of such a jointly agreed audit grid in the subsidiarity monitoring of the institutions and the various political levels would also give the results greater visibility and make it easier to compare results from different sources. A model grid, a sort of questionnaire, based on the one developed by the CoR to carry out its own subsidiarity monitoring, was annexed to the report.
4. *To evaluate and improve existing legislation, involving the local and regional levels more closely in providing information on how EU legislation actually works (or does not work) on the ground.* This would be done mainly through a network of regional hubs which would collect and channel opinions and hard data on the implementation of legislation (see below).
5. *To reduce the regulatory density within individual policy areas.* Legislation in some areas has become excessively ‘dense’, not least in response to the decreasing trust among member states and between them and the EU level. To reduce this density, a careful case-by-case evaluation of existing and future legislation is necessary. The European Commission should propose an appropriate process for this evaluation, based on an improved version of the existing REFIT (regulatory fitness and performance) initiative.

Due to time constraints, the Task Force was able to illustrate the latter objective with only one example: cohesion policy. Here the disproportionate amount of detail in regulations can be reduced, and in this way, great progress can be made towards bringing the

EU closer to its citizens whilst ‘doing less more efficiently’. Several of the European Commission’s proposals for the cohesion policy regulations for 2021–7 derive from both a series of CoR opinions adopted over the course of the current programming period and a series of technical workshops staged in 2016 and 2017. These workshops were organised in cooperation with the Dutch and Slovak Council presidencies and other institutional partners. These proposals were also presented to the Task Force (European Committee of the Regions 2018a). Amongst those that were included in the European Commission’s draft cohesion policy regulation for after 2020 are the following:

- Much simpler, clearer wording has been used throughout the cohesion policy regulation. As a result, the number of words in the European Commission’s current proposal has been reduced by almost 50%.
- With regard to the audit requirements, seven shared management funds are covered by a single framework. This simple, yet comprehensive rule book provides aligned implementation rules for all these funds.
- The number of enabling conditions has been reduced from 40 to 20. In particular, the thematic enabling conditions are now more clearly linked to the strategic policy frameworks in the specific areas.
- Overlaps between the content of Partnership Agreements and Operational Programmes have been eliminated. The new Partnership Agreement is a simpler and leaner document which can no longer be changed after initial adoption.

These innovations will not only significantly decrease the administrative burden for managing authorities and beneficiaries, but also substantially strengthen the principle of subsidiarity and proportionality. As a result, they can contribute to the effectiveness of programmes, increase the legitimacy of legislation, strengthen citizens’ commitment and help them take ownership of these programmes (Radzyner et al. 2014).

Having used this particular case to illustrate the general need to untangle legislation, the Task Force concluded that such evaluations should be pursued in other policy areas from a longer-term perspective. Together with more commonly discussed proposals to improve the participation of national and regional parliaments,³ these recommendations form part of the new approach of ‘active subsidiarity’. All of these proposals and recommendations focus on bringing a constructive approach to subsidiarity in the shaping of efficient EU laws that make sense on the ground.

Active subsidiarity in the CoR

The CoR has called on all EU institutions to implement the recommendations of the Task Force. It welcomes the changes the European Commission intends to introduce to its policymaking process as a result of its work (European Commission 2018a). Simultaneously the CoR has sought to lead by example and has begun implementing those of the Task Force’s recommendations that fall within its remit (European Committee

of the Regions 2018b). One of these is Recommendation 8, which states: ‘In general, the experiences of local and regional authorities and their networks should be fully taken into account when EU legislation is monitored and evaluated. The Committee of the Regions should implement a new pilot network of regional hubs to support reviews of policy implementation’ (Task Force on Subsidiarity 2018, 20).

Local and regional authorities are responsible for implementing around 70% of EU legislation. These levels have valuable expertise gained from the day-to-day application of EU regulations. The EU should draw on this expertise when preparing or reviewing legislation so that laws are effective on the ground and their regional impact is taken into account. This is the context for the CoR’s newly created pilot project of regional hubs.

The pilot project will review the implementation of a selected number of EU policies (such as public procurement, climate change and cohesion). It will bring together the first-hand experience of regions and pass its conclusions on to the EU institutions and other relevant stakeholders. In this way the pilot project will make it easier to design new regulations and review existing ones. It will also strengthen the role of the CoR in monitoring the implementation of EU legislation and reinforce the work of the Committee’s Subsidiarity Monitoring Network. The project will initially run for 2 years, involving 20 partner regions and an equal number of associate regions. If successful, it will pave the way for a wider, long-term project accessible to local and regional authorities across Europe. This project would get underway in 2021.

The CoR will also contribute to other Task Force recommendations where it can make a difference. It can, for example, raise awareness, promote the participation of local and regional authorities in tailor-made consultations, and help create links between the regional and national parliaments’ individual subsidiarity monitoring platforms. The European Summit of Regions and Cities in March 2019 offered a further opportunity to discuss the Task Force’s recommendations. The Summit of EPP Regional and Local Leaders in Bucharest, that immediately followed, confirmed the EPP-CoR’s commitment to take this agenda forward in its Manifesto “We want a European Union with the people and for the people” (EPP-CoR, 2019).

The CoR has been vocal in its support of the Task Force; and in its follow-up to the Task Force’s work, it continues to demonstrate its commitment. The CoR calls for the momentum to be maintained to ensure that all of the positive recommendations related to subsidiarity and the involvement of local and regional authorities are fully implemented. The CoR is happy with the positive response from the European Commission to these recommendations (European Commission 2018a) and is expecting the incoming Commission to take up where its predecessor left off.

Conclusion

In essence subsidiarity is about making decisions at the lowest level possible. It has the potential to bridge the gap between the EU and its citizens. Despite its key importance as a guiding principle for EU action, its application remains to this day a challenge for

all those involved. In its recent work the Task Force on Subsidiarity, Proportionality and Doing Less More Efficiently has taken a pragmatic approach and has opened up new avenues. It fully recognises the need for more Union action in areas where new challenges are emerging and where citizens see a role for the EU. These areas include security, defence and migration. The new way of working outlined above is that which the Task Force has proposed to ensure the Union works more efficiently. This new approach would allow the EU, despite its limited resources, to act on new fronts such as those just listed. The Task Force therefore concludes that rather than discussing the re-delegation of policy areas to the member-state level, it is important (1) to address ‘weaknesses’ in the current policymaking process by involving the national, regional and local levels more closely and (2) to develop a more ‘active’ and shared understanding of subsidiarity. Besides allowing the Union to use its resources more efficiently, implementing the Task Force’s recommendations could lead to more inclusive and effective EU legislation and increase the legitimacy of EU action in the eyes of its citizens.

The work of the Task Force should thus be seen as the beginning of an open-ended process. As President Juncker himself put it upon receiving the report, ‘I hope the leaders of the other institutions and national authorities will join me in putting these reflections at the heart of the future work of our Union’ (European Commission 2018b).

Subsidiarity is a central value of the EPP political family. The principle has a prominent position in the EPP Regional and Local Manifesto and in the EPP Manifesto for the 2019 EU elections and is supported by the EPP Spitzenkandidat for European Commission president. Subsidiarity must become one of the top priorities of the next European Parliament and Commission. After all, subsidiarity is all about bringing the decision-making process closer to the people—and this is an essential EPP value.

Notes

1. The principles of subsidiarity and proportionality are laid down in Article 5 of the Treaty on European Union. The subsidiarity principle aims to ensure that decisions are taken as closely as possible to the citizens and that the EU does not take action unless doing so would be more effective than if action were taken at the national, regional or local level. The proportionality principle limits the exercise of the EU’s powers to what is necessary to achieve the objectives of the treaties.
2. The CoR’s members in the Task Force were CoR President Karl-Heinz Lambertz, CoR Subsidiarity Coordinator Michael Schneider and Commission for Constitutional Affairs Chair François Decoster. National parliaments were represented in the Task Force by politicians from each of the three countries in the EU Council’s trio presidency: Toomas Vitsut (Estonia), Kristian Vigenin (Bulgaria) and Reinhold Lopatka (Austria).
3. These proposals included extending the period in which these parliaments need to submit their reasoned opinions under the Early Warning System and linking regional and national parliament subsidiarity screening work via these parliaments’ online platforms: REGPEX (Regional Parliament Exchange) and IPEX (Inter-Parliamentary Exchange), respectively.

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Author biography



Michael Schneider is State Secretary for Federal and European Affairs in the government of Saxony-Anhalt, led by Prime Minister Reiner Haseloff (CDU). Since 2010 he has been President of the EPP Group in the CoR, and since 2012 he is also President of the CoR's Steering Group on Subsidiarity. He was a member of the Task Force on Subsidiarity, Proportionality and Doing Less More Efficiently, which was established by European Commission President Jean-Claude Juncker in November 2017.