

European View

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Subsidiarity in the EU: From principle to practice

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Mikuláš Dzurinda

This year we celebrate a double anniversary. First, 2019 marks the thirtieth anniversary of the collapse of the Iron Curtain in 1989; but it is also the fifteenth anniversary of the 2004 enlargement that saw 10 countries join the EU. Both of these events were symbols of the reunification of Europe after the divisions caused by the Second World War and the Cold War, and thus they raised new hope among the people of Europe. Caught up in the euphoria of ‘the end of history’, as Francis Fukuyama called it, most failed to see that reunification would bring with it a series of new challenges. As the situation developed, the dissolution of Czechoslovakia and the conflicts erupting in the Western Balkans and in the post-Soviet countries from 1989 onwards demonstrated that war is always a possibility. Moreover, the 2004 enlargement and those that followed it came with many difficulties. These can be explained, in part, by the lack of preparation on the part of both the EU and the new member states. Another factor was the lack of understanding of the implications of the enlargement. Among these was the emergence of several divides within the EU: geographical, economic and political. This showed clearly that it would require further effort to truly reunify Europe.

The sequence of crises which has struck our Union—the financial crisis, debt crisis, migration crisis and more—has been met with various reactions. Some have advocated pulling back from the EU, calling for less ‘Brussels’ in national politics. Sadly, such calls have resulted in Brexit, even though, at this stage, the actual terms and conditions of the UK’s departure from the EU remain to be determined. Others, mainly in liberal and socialist ranks, have called for more Europe as the cure for all ills, supporting the establishment of a strong centralised European state. This would ultimately be counterproductive. While there is a genuine European identity, shaped by centuries of shared history, and while it is laudable to underline this common heritage, we should not underestimate

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the importance of our national and regional identities and cultures, to which our citizens are truly attached. Rather, we should work to preserve them.

To make the EU more effective and efficient, we need to come back to one of the founding principles of our EPP family, which is one of the fundamental principles of the Union itself. The principle of subsidiarity stipulates that decisions should be taken at the most appropriate level and as close as possible to citizens. As the recent Austrian presidency of the Council of the EU emphasised, this principle must be our compass when we discuss the future of Europe.

This is why we have decided that this issue of the *European View* should explore the concept of subsidiarity and its application to a variety of EU policies. I am glad we have been able to cooperate with the European Committee of the Regions (CoR). As the assembly of regional and local representatives, the CoR stands at the heart of the application of the principle of subsidiarity in the EU. It is therefore not surprising that the CoR played an important role in the Task Force on Subsidiarity, Proportionality and Doing Less More Efficiently, which presented its report on 10 July 2018. The article by Reinhold Lopatka, a member of the Austrian National Council and of the task force, helps us understand the proposals set forth in this report. Due to the institutional setting in many member states, regional and local entities are an essential cog in the wheel when it comes to implementing EU directives, and adapting them to local needs and specificities. For this reason, we are happy to be able to include articles by Michael Schneider, President of the EPP Group in the CoR and State Secretary for Federal and European Affairs in the government of Saxony-Anhalt; Alberto Núñez Feijóo, President of the Autonomous Community of Galicia; Wim Van de Donk, King's Commissioner for the Province of North Brabant; and Olgierd Geblewicz, President of the West Pomerania region of Poland. Their contributions shed light on the current situation regarding the principle of subsidiarity in various regions across Europe. The articles by Federico Ottavio Reho and Žiga Turk look at subsidiarity from a more theoretical perspective, analysing and conceptualising the principle itself. Jolyon Howorth's contribution approaches subsidiarity from a different angle, considering it in connection with the development of European defence.

The articles by Paul Butcher and Simona Pronckutė and by Theodore Pelagidis and Michael Mitsopoulos both deal with issues basic to the principle of subsidiarity: the former, the need to involve citizens in the decision-making process; and the latter, the quest for more Europe. I wish to stress that even though subsidiarity may imply less Europe in some policies, the EU as a whole and its member states must respect the Union's founding values and principles, as established in the Treaties and the Charter of Fundamental Rights. This is why I am happy to have Konstantinos Margaritis' contribution on the role of the Fundamental Rights Agency.

Finally, the application of the principle of subsidiarity does not prevent us from strengthening the EU's external action and developing a proper common foreign policy. The EU plays a crucial role in the world and especially in its own neighbourhood. This

role must be reinforced. Jean Crombois' article calls for reflection on one of the instruments of EU external action, the Eastern Partnership.

As we consider the principle of subsidiarity, we are drawn to reflect more deeply on the EU, its institutions and its policies. In rethinking Europe, we should not set artificial boundaries for ourselves. We should not hesitate to ask whether some steps went too far in the direction of centralisation or whether others might have been taken for egoistic reasons. This is the only way to move towards a federal EU that does not leave behind members, a Union all citizens can believe in and identify with.

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Subsidiarity in the EU: Reflections on a centre–right agenda

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Federico Ottavio Reho

Abstract

This article re-examines the problem of EU subsidiarity in the light of the political economy of federalism and centre–right thinking. It argues that if Christian Democratic, conservative and liberal parties are serious about strengthening subsidiarity, they should urge the EU to take steps in the direction of scenario four of the European Commission’s *White Paper on the Future of Europe*. Misleadingly titled ‘Doing less more efficiently’, this scenario is in fact about ‘delivering more and faster in selected policy areas, while doing less elsewhere’, as the subtitle correctly states. A new compact combining the targeted strengthening of key federal policies at the EU level with the EU’s gradual disengagement from other policy areas seems the most promising way to take the Union out of the doldrums and strike a compromise between Eurosceptics and Europhiles.

Keywords

EU, Subsidiarity, EPP, Centre–right, White Paper, Future of Europe, Federalism

Introduction

Whether explicitly mentioned or left unspoken, subsidiarity has been crucial to most recent discussions about the future of European integration. When the European Commission of President Jean-Claude Juncker announced that the EU should be ‘big on big things and small on small things’, it was clearly implying that a principle—subsidiarity—to operationalise the distinction between big and small was readily available. This principle has often been emphasised in the European speeches of Austrian Chancellor

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Sebastian Kurz, and it featured prominently amongst the priorities of the autumn 2018 Austrian EU presidency. And what, other than some sort of stricter subsidiarity, can widespread calls to bring the EU ‘closer to the people’ mean? Interest in subsidiarity stems from the principle’s promise ‘to address the allocation or use of authority within a political order’ in a way that accords the highest protection to the prerogatives of the sub-units, as opposed to the central level (Føllesdal 2014, 214). In other words, subsidiarity is appealing as a way to operationalise the notion of ‘unity in diversity’ in the EU by putting a strong emphasis on the protection of diversity. For this reason, this principle is more popular with Christian Democrats, conservatives and right-wing liberals than it is with progressive liberals and socialists, who are more geared towards equality and, therefore, unity.

This article argues that if Christian Democratic, conservative and liberal parties are serious about strengthening subsidiarity, they should urge the EU to take steps in the direction of scenario four of the Commission’s *White Paper on the Future of Europe* (European Commission 2017). Misleadingly titled ‘Doing less more efficiently’, this scenario is in fact about ‘delivering more and faster in selected policy areas, while doing less elsewhere’, as the subtitle correctly states. A new compact combining the targeted strengthening of key federal policies at the EU level with the EU’s gradual disengagement from other policy areas seems the most promising compromise to take the Union out of the doldrums.

To substantiate those claims, this article is organised into three sections. The first recaps the findings of the political economy of federalism, assessing the distribution of competences between member states and the Union in their light. The second reflects on the special meaning and importance of subsidiarity in centre–right politics. The third assesses the Commission’s scenarios on the future of Europe from a centre–right perspective. Some conclusions follow.

The political economy of federalism and the EU

Studies on the political economy of federalism have been taking place for decades, fundamentally enriching our understanding of the effectiveness and limits of federal arrangements. For our purposes, however, their most essential contribution is the construction of an analytical framework to assess when government decisions are best taken at the federal (meaning the central) level and when, instead, they should be taken at the state level.

In a nutshell, this literature has identified a trade-off ‘between the benefits of centralization, arising from economies of scale or externalities, and the costs of harmonizing policies in light of the increased heterogeneity of preferences in a large union’ (Alesina et al. 2001, 1). The general implication for the EU is obvious: like any other union of heterogeneous states, it ‘should focus exclusively on policy areas where economies of scale are large, and internalizing externalities is important, and delegate to national or lower-level government the policy areas where heterogeneity of preferences is predominantly relative to the benefit of scale’ (Alesina et al. 2001, 2).

International trade, for example, is characterised by large externalities and a relatively low heterogeneity of preferences; it is therefore best assigned to the EU level. On the other hand, educational choices in local schools are characterised by a high heterogeneity of preferences and relatively low economies of scale, and should thus be assigned to the national level. Unfortunately, allocating policy areas between different levels is not always so straightforward: for example, EU defence is characterised both by significant economies of scale that would justify centralisation on efficiency grounds and by an equally significant heterogeneity of preferences that has so far complicated even closer coordination. A similar, though not identical, case is that of social and redistribution policies. There are some—limited—economies of scale here, but there is also a radical heterogeneity of preferences.¹ These ambiguities are one very important reason why the analytical apparatus offered by the political economy of federalism is not enough to satisfactorily solve the competences' allocation problem. Citizens' preferences and political values must step in, at the very least to adjudicate in fields such as foreign policy or defence.

It is interesting to briefly summarise here the main conclusions of the most relevant application of the political economy of federalism to existing EU competences (Alesina et al. 2001). Although the analysis refers to the institutional set-up preceding the Lisbon Treaty, matters do not seem to have fundamentally changed since.² Strong EU competences are found to be largely appropriate in international trade, the single market and the single currency, while the role of the EU in education, research and culture appears 'justifiably limited' (Alesina et al. 2001, 19). As far as single market legislation is concerned, an important caveat is added: '[it] should aim at ensuring effective mobility of goods, services, capital and people in the Single Market area, but does not need to go beyond that. Top-down harmonization of national practices can be equally at odds with economic principles as impediments to trade are' (Alesina et al. 2001, 18). This is a clear indictment of the widespread misuse of single market legislation to try and harmonise health, social policy and other fields by stealth, which arguably has intensified in the last 20 years.

According to this analysis, the main EU competences most visibly deviating from these normative priors are agriculture and social protection, where the rationale for centralisation turns out to be very weak. In contrast, environment and international relations are areas where, on balance, the further development of supranational solutions appears justified. In other words, 'the allocation of EU policy prerogatives is partly inconsistent with normative criteria for the proper assignment of policies at different government levels. The EU is too involved in certain areas where economy of [*sic*] scale seem low and heterogeneity of preferences high and not involved enough in others, which, in principle, should have the opposite characteristics' (Alesina et al. 2001, 21).

These conclusions are fundamentally at odds with those reached on the topic by the recent Task Force on Subsidiarity, Proportionality and Doing Less More Efficiently promoted by the European Commission. 'There is EU value added', its final report reads, 'in all existing areas of activity and the Task Force did not, therefore, identify any Treaty

competences or policy areas that should be re-delegated definitively, in whole or in part, to the Member States' (European Commission 2018, 4).

The report's findings are all the more puzzling if one considers that the economic and financial crisis of the early 2010s has arguably further distanced the EU from a well-constructed federation, particularly as far as the Economic and Monetary Union (EMU) is concerned. For example, the crisis has seen a significant strengthening of the old Stability and Growth Pact, which is now 'both more encompassing and intrusive than what is found in federal or unitary states' (Wyplosz 2015, 17). There is no doubt that, in a monetary union, significant externalities can arise from decentralised fiscal policies, as we have repeatedly seen during the crisis. It is equally doubtless, however, that fiscal policy is one of the areas where the heterogeneity of preferences is strongest. A set-up based on a rigorous no-bailout rule and the decentralisation of taxing, spending and budgetary decisions therefore seems most appropriate, and ways to transition towards it should be seriously studied in the years ahead (Castañeda 2018).

Given the current political context in Europe, one final note is warranted. A consistent line of thought originating in *The Federalist No. 10* by James Madison has argued that a central government is better at handling civil rights issues and protecting minority rights than individual states. This is essentially because states tend to be more homogeneous than big federations; therefore the tyranny of the majority is a much greater risk at the state than at the federal level. A quick look at the role the federal level played in ending slavery and segregation in the US confirms this prediction (Calabresi and Bickford 2014, 132–3). On the other hand, one must bear in mind that maintaining separate arrangements over fundamental moral disagreements while enjoying the advantages of unity in fields such as defence or trade is one important—perhaps the most important—reason for privileging a federal order over a unitary one. Therefore, trying to federalise issues pertaining to fundamental rights over which there are moral disagreements between different states or groups of states, while perhaps morally commendable, can be politically disastrous in so far as it tends to encourage secession (Calabresi and Fish 2016). After all, the American Civil War was essentially fought on the issue of whether banning slavery should be a state or a federal competence. In the EU these considerations seem to justify a cautious strengthening of the federal role in protecting and enforcing the fundamental rights of individuals and minorities, which have recently appeared threatened in several member states. By cautious, it is meant that the accepted definition of fundamental rights to be enforced at the EU level should be prudent and limited to stronger safeguards for the rule of law and the so-called negative freedoms.

Subsidiarity and diversity in centre–right thinking

Since, as just illustrated, the problem of EU competences cannot be solved on purely technocratic grounds, one's vision of the common good must assist in adjudicating ambiguities and lending coherence to our plans for the future of Europe. This is especially so given the overpowering role of subsidiarity in the political outlook of Christian

Democracy, as well as in the streams of conservatism and liberalism represented within the European People's Party (EPP).

While the values listed in Article 5 of the Treaty on European Union are shared by all mainstream political families, subsidiarity entered the discourse—and the law—on European integration purely as a contribution from the Christian Democratic tradition.³ It therefore belongs to the EPP more than to any other political family, and to it more than any other EU value. Article 5 of the Treaty of Lisbon gives a very minimalist definition of subsidiarity, stating that EU action is justified only if and insofar as its objectives cannot be sufficiently achieved by the member states, but can rather, by 'reason of the scale or effects', be better achieved at Union level. But reasons of scale and effects can always be found to justify EU action, and have been. The centre-right cannot be satisfied with a notion of subsidiarity based merely on the utilitarian criteria of efficiency and effectiveness.

To be of any help in the debate on EU competences, subsidiarity should rather be given a stricter interpretation by the centre-right, and understood as guaranteeing the integrity of Europe's historically developed nations and regions. Taking subsidiarity seriously means that the Union should primarily be seen as the protector of its members' integrity, autonomy, independence and identity, and not as an agent of uniformity and centralisation. Subsidiarity should thus urge not only EU institutions but each member state to accept and tolerate other members' values and preferences, however different they may be from theirs.⁴

When the strictest understanding of subsidiarity is adopted to protect diversity, the particular nature of European unity as defended by the centre-right stands out. Socialists and liberals see the EU as a tool to advance their ideologies, that is, to promote the advent of a uniform continent characterised by high economic redistribution, equality, liberal lifestyles and multicultural societies. For the centre-right, in contrast, the Union's primary role should be guaranteeing each country's right to an autonomous existence in a world in which each of them in isolation would become the vassal of extra-European powers. The Union of our competitors needs the very intrusive power of regulations and control to ensure conformity on a wide variety of issues. Ours can be a lean and agile framework for continental openness and joint action, a minimalist federation or confederation that ensures peace, deals with a few strategic issues, and fully respects national and regional autonomy (Reho 2017). The motto 'as much Union as necessary, but as little as possible' should encapsulate our European vision better than 'ever closer union', which implies convergence towards a predefined identity. EU integration should be strong, but focused and limited.

This specific philosophical outlook on subsidiarity—which is not universal even within the EPP political family—has a bearing on the problem of EU competences as elucidated by the political economy of federalism. It strengthens the case for solid continental unity on external policies—those that reinforce the ability of Europe's historical states to survive and thrive in the increasingly competitive international environment of

the twenty-first century. It thus urges the EPP to decisively adjudicate policies such as defence, foreign affairs and border control in favour of the EU.⁵ At the same time it calls for extreme caution in advocating EU action whenever it would weaken the autonomy and powers of those member states which are in pursuit of totally different goals, such as ‘equality’ or ‘progress’, whatever these vague notions may mean. This is surely the case for the measures of economic equalisation commonly associated with ‘social Europe’, as well as for initiatives that promote a ‘work–life balance’ or tax harmonisation at the EU level.

The Commission’s White Paper and the future of Europe

In 2017, the Commission implicitly acknowledged that there was no longer a consensus on the future trajectory of the European project. It did so by publishing its important *White Paper on the Future of Europe*, which, for the first time, laid out alternative scenarios about how the EU might evolve in the future. The paper was extensively commented on at the time of publication, but it still offers a useful range of options on which to base our reflections. Here it will suffice to briefly assess its scenarios against the technical and ideological criteria sketched above.

Scenario one is ‘carrying on’, meaning that the Union would continue to implement already agreed reforms and gradually improve upon the status quo, but nothing more (or less). Clearly, this scenario does not address the flaws underlined by the political economy of federalism, nor does it correct the indiscriminate bias towards ‘more Europe’ that has been quintessential to the European project so far and has provoked fears of the inadequate protection of subsidiarity.

Scenario two is ‘nothing but the single market’, meaning that the EU would increasingly focus ‘on deepening certain key aspects of the single market’ (European Commission 2017, 18) while giving up integration in areas such as migration, security and defence. This is highly unsatisfactory too: it excludes from the integration process policies characterised by high externalities/economies of scale and relatively low heterogeneity of preferences. It also leaves weak and uncoordinated member states at the mercy of extra-European powers. Interestingly, the Commission associates this scenario with significantly reducing the ‘regulatory burden by withdrawing two existing pieces of legislation for every new initiative proposed’ and fears that a ‘race to the bottom’ might ensue (European Commission 2017, 18). This is notable for the implicit admission—in line with the reported findings of Alesina et al.—that enforcing the four freedoms in the EU does not require the amount of top-down harmonisation that has been pursued since the 1990s and which is therefore not defensible based on the political economy of federalism. This harmonisation seems rather to have been pursued to avoid so-called ‘races to the bottom’. Unfortunately, on close inspection and despite widespread proclamations to the contrary, race-to-the-bottom arguments are untenable from the vantage point of a centre-right approach to subsidiarity. To my knowledge, no one has said it better than Giandomenico Majone, formerly of the European University Institute:

[I]f harmonization prevents competition on, say, environmental quality, then states would presumably try to compete over other variables, such as worker safety, minimum wages, or taxation of corporate profits. To avoid these alternative races to the bottom, and the resulting instability, the central regulators would have to harmonize all national rules, so as to eliminate the possibility of any form of inter-state competition altogether. But this would amount to eliminating any trace of national autonomy, so that race-to-the-bottom arguments are, in the end, arguments against subsidiarity.' (Majone 2014, 277)

To summarise, the Commission's treatment of scenario two is more interesting for what it reveals about the (questionable) mindset that has dominated European (market) integration in the past, than for its viability as a future scenario. It tells us that, if our commitment to subsidiarity is to be taken seriously, this mindset should change.

Scenario three is 'those who want more do more', meaning that the EU allows willing member states to do more together in specific areas such as defence, internal security, taxation and social matters, accepting that variations in EU citizens' rights may result (European Commission 2017, 20). The rudimentary summary of the political economy of federalism expounded above does not throw much light on this problem. It suffices here to add that 'in equilibrium one should observe either small unions that centralize many prerogatives, or large unions in which few prerogatives are delegated above national governments. . . . [E]nlargement of the union and a deepening of coordination of policies are contradictory if the new members and the incumbents are heterogeneous' (European Commission 2017, 3). This implies that the heterogeneity of a union now enlarged to 28 very diverse members may justify some forms of differentiated integration. That is unless we can agree on moving towards a large EU27 in which only a few core prerogatives, as opposed to many diverse ones, are centrally exercised, which is the proposition of scenario four.

Here the union would focus 'its attention and limited resources on a reduced number of areas', in which stronger tools would be given to the EU27 to directly implement and enforce collective decisions (European Commission 2017, 22). Fields mentioned by the Commission as candidates for such a refocusing are strikingly in line with what theoretical arguments show to be ideal federal policies: innovation, trade, security (e.g. police and judicial cooperation against terrorism), migration, the management of borders and defence. The document adds:

Conversely, the EU27 stops acting or does less in domains where it is perceived as having more limited added value. . . . This includes areas such as regional development, public health, or parts of employment and social policy not directly related to the functioning of the single market. . . . New standards for consumer protection, the environment and health and safety at work move away from detailed harmonisation towards a strict minimum. More flexibility is left to Member States to experiment in certain areas. (European Commission 2017, 22)

These proposals are not only in line with the political economy of federalism, but also with the requirements of a rigorous centre-right approach to EU subsidiarity. This is surely not so for scenario five of the Commission's White Paper: 'doing much more

together' across all policy areas (European Commission 2017, 24). Although the rhetoric of so-called Europhiles has historically identified with this vision, and still often usurps the name of European federalism, it should be emphasised that it has nothing to do with proper federalism. It is, in fact, an instance of European centralism incompatible with any real subsidiarity.

Conclusion

This paper has argued that the current design of EU competences is unsatisfactory on both technical and political grounds. Technically, EU competences do not correspond to the recommendations of the political economy of federalism. Politically, they do not respect the rigorous conception of subsidiarity expounded by centre-right political thinking.

Based on this, we can sketch the contours of a five-pronged centre-right political agenda at the EU level for the next legislative cycle and beyond.

First, the EU27 is characterised by a very high heterogeneity of preferences. If it wants to survive as a big, diverse union, it must refocus its limited resources and legitimacy on integrating a few strategic areas and returning all the rest to the competences of the member states.

Second, environmental protection, control of immigration and borders, defence against terrorism, foreign and defence policy, and promoting research and innovation are all best addressed at the European rather than the national level. In these fields, the highest possible level of ambition and integration is appropriate and should be pursued.

Third, the EU should gradually withdraw from agricultural policy, cohesion policy and social policy. It should also explore ways to restore full national responsibility for economic and fiscal policy decisions, which de facto became a shared competence during the crisis.

Fourth, EU regulation needs to be scaled back to what is necessary to complete the single market and nothing more. A review of all existing EU legislation against these requirements should be carried out. For all the Juncker Commission has achieved in stemming the flow of new regulations, the legacy of over-regulation must be dealt with, and the excess of regulation discarded, thus reopening spaces for national autonomy.

Fifth, the abuses of single market legislation to pursue other—for example, social or health policy—goals by stealth should be ended. Redistribution and the welfare state are at the core of national democracies and must therefore remain firmly in the hands of the member states, without European constraints.

In everything but name, scenario four of the Commission's White Paper should serve as the outline for the federal Europe to be built in the coming decades under centre-right

leadership. This Europe can reconcile Europhiles, who want stronger continental integration, with Eurosceptics, who demand stronger national prerogatives and the repatriation of some powers. It seems the only viable agenda of unity for the EU27 in the twenty-first century.

Notes

1. In fact things are more complicated than that. The notion of economies of scale merely tells us that costs per unit of output decrease with increasing scale. It tells us nothing about the desirability of producing a good, such as defence or redistribution, that may benefit from economies of scale. For those who believe that an expensive welfare state has a detrimental effect on economic performance, even the presence of economies of scale coupled with a very low heterogeneity of preferences would not be decisive for advocating centralisation at the EU level.
2. The best recent account of post-Lisbon EU competences is offered by Garben and Govaere 2017.
3. It is well known that the principle of subsidiarity was first formulated in Leo XIII's encyclical 'Rerum Novarum' (1891) and further refined in Pius XI's encyclical 'Quadragesimo Anno' (1931) as a systematisation of traditional Catholic doctrines expounded at least since Thomas Aquinas.
4. It goes without saying that none of this justifies acquiescing to radical deviations from the protection of commonly accepted fundamental rights and freedoms. These include the rule of law and the basic constitutional foundations of a functioning liberal democratic order, to which all EU member states have committed. As explained in the previous section, what it does justify is a prudent and, so to say, 'conservative' definition of such fundamental rights and freedoms. It is important that EU institutions dissociate themselves from any attempts to force progressive values on more conservative member states as part of an ideological agenda that alters the EU constitutional order, as opposed to protecting it.
5. Obviously, this only tells us that these should be EU policies. It tells us nothing about how they should be exercised at the EU level. Should we favour the community method, intergovernmentalism or a different model altogether? However important, such questions lie beyond the scope of this short article.

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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,

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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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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.



Subsidiarity: Bridging the gap between the ideal and reality

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Abstract

There is no alternative to the megaproject we call the ‘European Union’. But it could be brought much closer to the citizens of Europe by putting the principles of subsidiarity into effect in more practical ways. This requires greater involvement by national, regional and local stakeholders. Subsidiarity means less Europe where EU-level action would not add value, but more Europe where we need Europe-wide efforts. The new Austrian government wants to shape the EU in accordance with the principle of subsidiarity. What can be done? How can national, regional and local authorities play a greater role in the legislative process? It would help if the member states could be given more time to examine whether new proposals for EU legislation conform to the principle of subsidiarity. This would mean extending the eight-week period that is currently allotted for carrying out these examinations. Directives should be preferred over regulations, and the use of delegated acts should be restricted. A ‘Green Card’ procedure could expand the political dialogue aimed at initiating new EU legislation. And efforts to improve EU legislation linked to subsidiarity should focus on reducing overregulation and bridging the gap between the ideal and the real.

Keywords

Subsidiarity, Austria, National parliaments, Regionalism, Committee of the Regions

Introduction

The principle of subsidiarity holds that decisions should be taken at the most immediate or local level possible and thus as close to the citizens as possible. It is one of the core organising principles of the EU and can be considered from political, legal and administrative perspectives. Politically, subsidiarity relates to a wide variety of situations. In some cases, member states make demands of supranational authorities; in others they voice

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reservations about EU-level entities. Member states point out that it would be better to have more extensive EU policies in some areas and less extensive policies in others. Legally, the subsidiarity principle, as laid down in Article 5(3) of the Treaty on European Union (TEU), determines whether action should be taken at the European level or at state level, thus helping to settle disputes concerning the division of competences. The procedures for monitoring compliance with subsidiarity are set out in Protocol 2 to the TEU on the application of subsidiarity and proportionality. This protocol puts national parliaments at the forefront. In terms of administrative adaptations, the European Commission and national parliaments have invested in procedures aimed at the more consistent application of certain regulatory principles to political decisions. This article gives an overview of the subsidiarity scrutiny process, the work of the Task Force on Subsidiarity and Proportionality, and Austria's proposals. Finally, it discusses how the debate on this area is likely to go in the future.

Shaping and applying subsidiarity

The principle of subsidiarity acquired legal status in the EU when it was incorporated into the 1992 Maastricht Treaty. Since then it has become one of the fundamental principles of the EU.

Under the subsidiarity principle, in areas which do not fall within its exclusive competence, the EU shall act only if and insofar 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. (Article 5(3) TEU)

This means that the question of who can better achieve an objective is only applicable in areas of shared competence. A distinction is made between (1) areas that fall under the exclusive competence of the EU (e.g. trade policy and customs union policy); (2) areas shared by the member states and the EU (e.g. environmental control, consumer protection and social policy); and (3) areas which remain within the exclusive competence of the member states (e.g. significant areas of healthcare policy and defence).

Since the Lisbon Treaty entered into force in December 2009, the subsidiarity principle has been standardised in Article 5(3) and Protocols 1 and 2 of the TEU. Protocol 1 focuses on the role of national parliaments in the EU, while Protocol 2 deals with the application of the principles of subsidiarity and proportionality. The Lisbon Treaty has strengthened the subsidiarity principle by closely integrating national parliaments in EU-level legislative processes. It has done this, more specifically, by requiring the EU to provide information about European legislation to the national parliaments and through the 'early-warning mechanism'.

According to Protocol 2 to the TEU, Article 4, the Commission must forward its draft legislative acts immediately to national parliaments. Once a legislative proposal is available in all official EU languages, an eight-week period starts for national

parliaments to study the proposal. If they conclude that the proposal does not comply with the subsidiarity principle—that is, that EU-level legislation would not add value in the case in question and that the proposal should therefore be withdrawn—they have until the end of this period to submit a reasoned opinion on the issue (a ‘subsidiarity complaint’). Each national parliament has two votes, distributed on the basis of the kind of parliamentary system involved. In countries with a bicameral parliamentary system (as is the case in Austria), each of the two chambers has one vote. Depending upon the number of votes cast, there are two further processes.

First, if within the period of eight weeks at least one-third of all the votes allocated to the national parliaments have been cast against the proposal (or one-quarter in the case of draft legislative acts submitted in the area of freedom, security and justice), a ‘Yellow Card’ is triggered. In such a case the Commission must review its proposal, but it is under no obligation to modify or withdraw it. Reasons must be given for any decision on further procedures (Protocol 2, art. 7(2)).

Second, when reasoned opinions represent a majority of the votes and the draft act falls under the ordinary legislative procedure (i.e. the EU’s standard procedure for decision-making), the Commission must review its proposal and decide whether to maintain, change or withdraw it. If the Commission decides to retain its proposal, it must justify its decision: it must show that the proposal complies with the principle of subsidiarity. This is known as the ‘Orange Card’ procedure. If a simple majority of members of the European Parliament, or 55% of Council members, find that the proposal breaches the principle of subsidiarity, the proposal will not be given further consideration.

Thus far there have been three Yellow Cards (Auel and Neuhold 2018). The first one was issued in 2012 and pertained to a proposal for a Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services, the Monti-II-Regulation. The second was triggered in 2013 and concerned a proposal to establish a European Public Prosecutor’s Office. The third was issued in 2016 and concerned a proposal to amend the directive on the cross-border posting of workers. In the first case, the European Commission withdrew its proposal. In the other two, it retained its proposals. The Austrian Federal Council ranks among the most active players in the subsidiarity scrutiny process (see Figure 1).

Protocol 30 to the 1997 Amsterdam Treaty on the application of the principles of subsidiarity and proportionality, which ceased to be in force with the Lisbon Treaty, did not provide the national parliaments with scrutinising rights. However, it contained substantive criteria for deciding when a legislative proposal is compatible with the subsidiarity principle. Protocol 30 contained several guidelines that had to be complied with when scrutinising whether the conditions imposed by the subsidiarity principle had been fulfilled. According to Article 5 of this protocol, for Community action to be justified, it needed to be clear that ‘the objectives of the proposed action cannot be sufficiently achieved by Member States’ action in the framework of their national constitutional system and can, therefore, be better achieved by action on the part of the Community.’

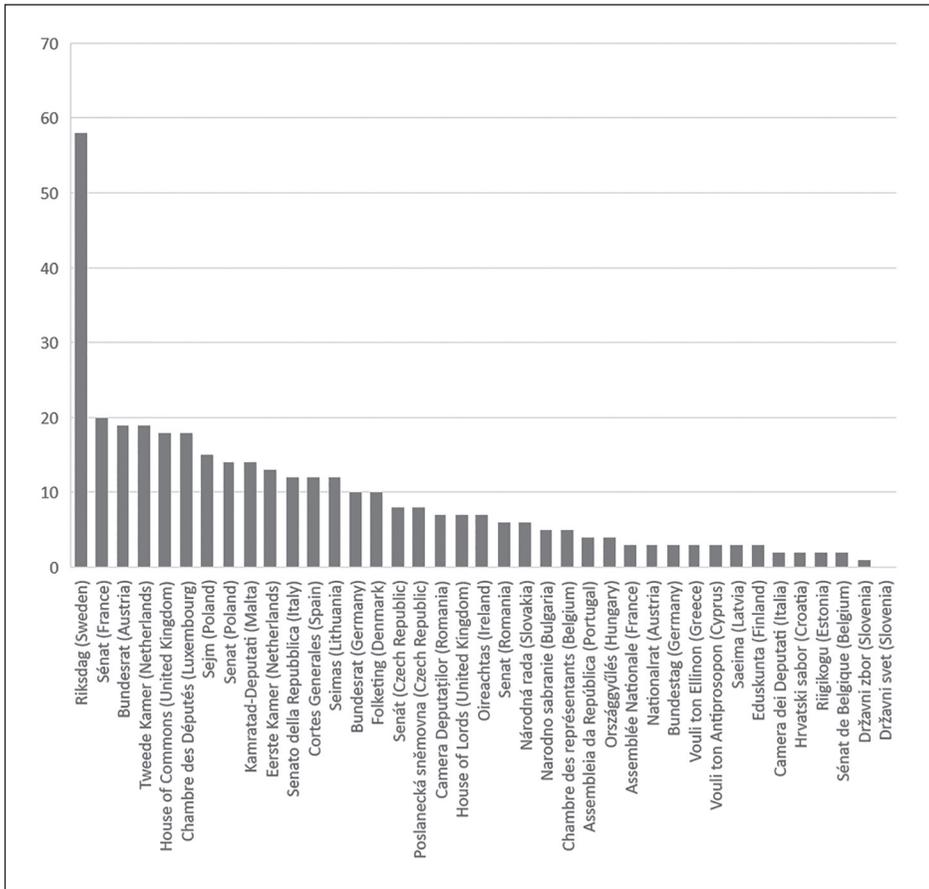


Figure 1 Number of reasoned opinions (early warning system) by chamber (2010–16).
 Source: Auel and Neuhold 2018, 27.

To examine whether a specific legislative proposal fulfils the above-mentioned condition, Article 5 of the protocol set forth the following three guidelines:

- ‘-the issue under consideration has transnational aspects which cannot be satisfactorily regulated by action by Member States;
- actions by Member States alone or lack of Community action would conflict with the requirements of the Treaty (such as the need to correct distortion of competition or avoid disguised restrictions on trade or strengthen economic and social cohesion) or would otherwise significantly damage Member States’ interests;

- action at Community level would produce clear benefits by reason of its scale or effects compared with action at the level of the Member States.’

Furthermore, the Commission was obligated, except in cases of particular urgency or confidentiality, to consult widely before proposing legislation and, wherever appropriate, to publish consultation documents. The Commission also had to ‘take duly into account the need for any burden, whether financial or administrative, falling upon the Community, national governments, local authorities, economic operators and citizens, to be minimised and proportionate to the objective to be achieved’ (Protocol 30, art. 9). An equally clear legal basis for subsidiarity is not found in the Lisbon Treaty.

Better EU governance

In the last years several member states have voiced their wish for better EU governance and have looked into ways to reduce bureaucracy. At EU level, corresponding efforts have been made *inter alia* with the report *Cutting Red Tape in Europe* (High Level Group on Administrative Burdens 2018) and its attempt, which has met with mixed success, to roll back the EU’s competences and to reduce the administrative burden. In any case, the overall objective of better regulation is regarded as central, whether it is achieved through subsidiarity, proportionality, the choice of the least disruptive instrument, reducing the administrative burden or raising the quality of output. Subsidiarity is a tool for making EU policies more focused and thus more effective.

Member states routinely express support for the REFIT (Regulatory Fitness and Performance) programmes set up by the Commission to revisit periodically the stock of regulations, to ensure that, *inter alia*, these comply with the principles of subsidiarity and proportionality. Programmes aimed at reducing the administrative burden have been conducted under different names over the past 25 years.

The work of the Task Force on Subsidiarity and Proportionality

In November 2017 Jean-Claude Juncker, the President of the European Commission, established the Task Force on Subsidiarity, Proportionality and Doing Less More Efficiently. It consisted of nine members: three from national parliaments, three from the Committee of the Regions and three from the European Parliament. The Committee was chaired by Frans Timmermans, the First Vice-President of the European Commission. Austria was represented by the author of this article, who is also Chairman of the Austrian parliament’s Permanent Subcommittee on European Affairs. The Task Force finished its work in July 2018.

The Austrian parliament and the country's federal provinces are strongly committed to the principles of subsidiarity and proportionality. On the parliamentary level, a specific constitutional mechanism provides for the involvement of various stakeholders. The Federal Council is required to inform the regional parliaments without delay about new legislative proposals by the EU. This gives them an opportunity to voice their opinions. Subsidiarity is also a key priority of the Austrian Federal Government. It explicitly supports further development of the EU in accordance with the guideline 'doing less more efficiently' and has included this position in its government programme.

Policy areas have also been identified where more competences must be transferred to the European level: the protection of external borders, defence and digitalisation. As already mentioned, subsidiarity means not only less Europe in areas where European-level action does not add value, but also more Europe in areas where we need joint Europe-wide efforts to tackle common challenges. This side of the principle of subsidiarity is often forgotten.

On the basis of its experience in these matters, Austria has contributed more proposals than any other member state on the better application of the principles of subsidiarity and proportionality. The aim is to improve the involvement of regional and local levels and to identify policy areas where competences could be partially reassigned to the member states (e.g. cohesion policy, soil and nature protection). The following Austrian proposals have one goal: to avoid overregulation and to promote greater and better involvement by national and regional parliaments.

Excerpts from specific Austrian proposals¹

Extending the deadline for scrutinising subsidiarity

The eight-week period for submitting reasoned opinions set forth in Protocol 2 is considered too short by experts and Members of Parliament. It does not allow sufficient opportunity for regional or national parliaments to scrutinise proposals and coordinate opinions. As an alternative to amending this protocol, the Commission could agree to deal with opinions that arrive 12 weeks after proposals are presented. Additionally (or alternatively) the Commission could extend the deadline once a specific number of national opinions have been received.

Giving directives precedence over regulations

To avoid overregulation and to create the best possible basis for complying with the principles of subsidiarity and proportionality, the fundamental precedence of directives over regulations should be enshrined in the treaties.

The protocol to the Treaty of Amsterdam on the application of the principles of subsidiarity and proportionality includes the obligation to choose the form of Community

action which least interferes with national law. This obligation is omitted in Protocol 2 to the Lisbon Treaty. Instead, this treaty quite clearly defines which form—that is, either directive or regulation—any legal act must assume. To comply with the principles of proportionality and subsidiarity, in those areas where the European legislator has freedom of choice as to the form Community action can take, directives should be preferred over regulations.

In 2000 we had 16 regulations and 34 directives. In 2017 there were 52 regulations and only 14 directives (Eur-Lex 2019a). These developments could threaten the principle of subsidiarity.

Green Card

A ‘Green Card’ procedure should be introduced that would make it possible to extend the political dialogue without amending the Treaty, that is, solely on the basis of a political agreement. In this context, a parliament should be able to make legally non-binding proposals for both new EU legislation and amendments to existing legislation. Although this is possible even today, national parliaments currently contact EU institutions only on an individual basis. In the future all national parliaments should have the opportunity to voice their support for a proposal submitted by a single national parliament. Each parliament should have two votes. Where a quarter of the votes have been cast in favour of a given proposal, the initiative should be given a Green Card status, and a joint letter from all the supporting parliaments should be sent to the European Commission.

So far there have been four such initiatives by national parliaments. The European Commission has included only one of these in its legislation. This was the Food Waste initiative (proposed by the UK House of Lords), which was included in the Circular Economy Package—and even here, this was done without a clear reference to the initiative.

Restricted use of delegated and implementing legal acts

The growing number of ‘delegated acts’ is an example of the erosion of the competence to scrutinise subsidiarity to the disadvantage of member states and their regions. Delegated acts are based on fundamental legislation enacted by the Council and the European Parliament, and concede legislative powers to the Commission. The member states have very limited opportunity to participate in these decisions, and these acts are not subject to subsidiarity scrutiny by national parliaments. A large number of the EU’s legal acts require delegated regulations, and a large number of competences are delegated to the Commission. The number of delegated legal acts increased from 38 in 2012 and 56 in 2013 to 133 in 2017—in 2018 there were 87 such acts (Eur-Lex 2019b). It is crucial that the use of these acts should be restricted.

Implementing legal acts can be used where uniform conditions for implementing legally binding Union acts are needed (Article 291 TFEU). In these cases, the relevant basic legal acts can confer implementing powers on the Commission. The power to adopt such implementing legal acts grants comprehensive rights to the Commission, and these acts should therefore be used sparingly. To give one such example, it is through implementing legal acts based on the EURES Regulation of 13 April 2016 (European Parliament and Council 2016) that the Commission has intervened in domestic labour markets—with far-reaching consequences. Moreover, a plethora of reporting obligations are being imposed upon member states (as a result of the adoption of the Performance Measurement System), without any matching added value. In the course of such efforts, the Commission has also sought to expand its data protection competence to the detriment of the member states—but the rationale for doing this is not immediately clear.

Including a definition of subsidiarity in the Interinstitutional Agreement on Better Law-Making

As an alternative to amending Protocol 2, a clear definition of subsidiarity and proportionality could be included in the Interinstitutional Agreement on Better Law-Making. This could be done by inserting the text of Protocol 30 to the 1997 Treaty of Amsterdam on the application of the principles of subsidiarity and proportionality.

Adopting a ‘Subsidiarity Pact’

The Interinstitutional Agreement needs to be complemented by a provision dealing with a subsidiarity pact between the three legislative bodies. This pact needs to ensure that the Commission restricts its proposals to those which have been previously agreed upon in the European Commission’s working programme. Furthermore, in the future the Commission needs to refrain from publishing non-binding recommendations and communications on specific subject matters, if no appropriate legal basis exists.

Final report by the Task Force on Subsidiarity and Proportionality

Some of Austria’s proposals were seen as too far-reaching and were therefore not included in the final report (Task Force on Subsidiarity, Proportionality and Doing Less More Efficiently 2018). Others, however, found wide support among the members of the task force.

The following items that Austria introduced were included in the final report:

- The deadline for scrutinising subsidiarity by national parliaments should be extended from 8 to 12 weeks. The necessary treaty amendments should be adopted

at the first opportunity for treaty revision. In addition, the Commission should be flexible when applying the eight-week deadline. The Commission should improve the way it deals with reasoned opinions submitted by national and regional parliaments. (Recommendations 2 and 3)

- The involvement and visibility of regional and local authorities should be increased by improving impact assessment, consultations and Union legislation. (Recommendations 4 and 5)
- Problematic areas linked to subsidiarity and proportionality should be identified. In its conclusions, the task force did not agree to Austria's proposals on this issue, including those dealing with cohesion policies and the protection of the soil and nature. However, the Commission will develop a mechanism to identify and evaluate legislation from the perspective of subsidiarity and proportionality. (Recommendation 8)
- The Council, Parliament and Commission should make sparing use of delegated and implementing acts, which do not fall under the scrutiny of subsidiarity by national parliaments. (Recommendation 9)
- In specific policy areas, the effective implementation of existing regulations should take precedence over the creation of new regulations. (Recommendation 9)

The following items that Austria introduced were not included in the final report:

- In the proceedings of national parliaments to scrutinise subsidiarity, the threshold required for a Yellow Card should be reduced from one-third to one-fourth, and that for an Orange Card from a simple majority to one-third.
- A 'Late Card' procedure should be established which would grant the national parliaments the right to scrutinise draft legal acts a second time at the end of negotiations between the Commission, the European Parliament and the Council.
- A Green Card procedure should be introduced that would allow national parliaments to extend the political dialogue aimed at initiating new EU legislation or amending existing legislation.
- Directives should take precedence over regulations in order to give national and regional parliaments the chance to be involved in the legislation under discussion.
- The 'one in, one out' principle should be made permanently effective. This means that the Commission should only be allowed to make a new proposal if a proposal to cancel an existing EU provision is made at the same time.
- A subsidiarity pact should be adopted that would restrict the Commission's activities to its working programme.
- A legally binding definition of subsidiarity should be established.

Conclusion

The work of the task force has restarted the debate on subsidiarity. After the European election in May 2019, the new European Commission should continue to bridge the gap between the ideal and reality.

With the publication of the ‘Subsidiarity Package’ in October 2018, the Commission set out how the principles of subsidiarity and proportionality will guide its future work and how it can further strengthen their role in EU policymaking—especially through the ‘subsidiarity grid’ proposed by the task force and strongly supported by the Committee of the Regions. The Commission committed itself to making it easier for national parliaments to meet the deadlines for submitting their opinions on draft proposals. It said it would examine how to improve the collecting of and reporting on local and regional authorities’ views in its public consultations. It announced plans to reshape the REFIT Platform to increase the presence of local and regional authorities. The Commission also stated its intention to widen the scope of this platform, which currently focuses on the regulatory burden, to include subsidiarity and proportionality. This provides a proper basis for the new European Commission.

In its draft report *The State of the Debate on the Future of Europe* (European Parliament 2018, 10), the European Parliament ‘takes note of the report of the Task Force on Subsidiarity, Proportionality and Doing Less More Efficiently of July 2018, presenting recommendations on a new way of working.’ It does not, however, welcome this report. Hopefully the new Parliament will be more positive than the current one when it comes to the principle of subsidiarity.

Subsidiarity is also on the agenda of the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC), in which representatives of the member states and of EU-applicant countries have worked together on an interparliamentary level since 1989. The last plenary meeting of COSAC was held in Vienna in November 2018. The final conclusions emphasised that the involvement of national parliaments in policymaking and the legislative process at European level is of major importance for ensuring transparency, efficiency and public acceptance. For this reason, the conclusions go on to say, COSAC welcomes the steps being taken towards extending the eight-week deadline for the submission of reasoned opinions within the framework of the subsidiarity control mechanism. Finally, the conclusions reiterated COSAC’s approval of the Green Card mechanism as an extension of the political dialogue between the European Commission and the national parliaments (COSAC 2018).

Note

1. For a comprehensive description of Austrian activities in the area of subsidiarity, see Lopatka 2018.

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Transposition of the Services Directive and subsidiarity: A view from Galicia

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Abstract

The implementation of the directive on services in the internal market has been a challenge in many parts of the EU. This is particularly true with regard to the interaction between the member states and their public entities, for example, the interaction between the Kingdom of Spain and Galicia. Implementing the directive in Spain required the passage of important legislation, at both the Spanish and Galician levels, and this took several years. Galicia's experience is particularly interesting since the implementation of the directive had to take into account the community's cross-border business activities with Portugal. This article argues that European regions, especially those with legislative powers, cannot confine themselves to merely being recipients of matched funding from the EU budget. Instead, they must take shared responsibility and work together as equal collaborators in implementing European law, even where it clashes with the status quo and the vested interests of certain minorities.

Keywords

Subsidiarity, Galicia, Spain, Services Directive

Introduction

Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2016 (the 'Services Directive') has extraordinary economic, legal and political significance (European Parliament and Council 2006). Through its provisions for fighting red tape, it is improving the lives of millions. It is not just another EU directive among hundreds of others. It is a horizontal provision which has an economic impact on thousands of small and medium-sized enterprises (SMEs) across all of the EU member states and

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which helps to improve the lives of millions of European workers and consumers. However, any major economic policy measure faces some degree of resistance. In the case of the Services Directive, there is some resistance to change and liberalisation, which can be seen in small local or sector-specific markets, whether at municipal, regional or even state level. And it is at the local and regional levels that this resistance to change and liberalisation is strongest. This makes the work of a regional government more complex, as it has to reconcile implementing EU law with specific regional considerations and the reservations of much of its electorate.

This article sheds light on the complications that arose during the transposition of the Services Directive into the Galician legal system. It pays special attention to the particular ties between Galicia and the Portuguese Republic. It argues that European regions, and especially those with legislative powers, cannot confine themselves to merely being recipients of matched funding from the EU budget. Instead, they must take shared responsibility and work together as equal collaborators in implementing European law, even where it clashes with the status quo and the vested interests of certain minorities.

The rest of the article is divided into four sections. The first explains why the Services Directive stands out from other EU directives. The second focuses on the challenges that Galicia encountered in implementing the directive. Section 3 looks at subsidiarity and the importance of the local and regional levels in implementing directives. And the fourth section provides a brief conclusion.

The Services Directive

The Services Directive was published in the *Official Journal of the European Union* on 27 December 2006. It is not just any directive, because its objective is to remove the legal and administrative barriers to trade so that Europe's services markets can realise their full potential. To understand its extraordinary economic, legal and political significance, as well as its importance in the day-to-day activities of both SMEs and Europeans in general, we need to call to mind some key facts.

First, before the directive was adopted, the European press referred to it as the draft Bolkestein directive (European Parliament 2006). This is because it was spearheaded by Frits Bolkestein, who was then the European Commissioner for Internal Market, Economic and Financial Affairs, and Taxation and Customs. The mainstream media considered this draft to be the impetus behind much of the French campaign against the failed Treaty Establishing a Constitution for Europe. After a substantial review, it became the directive currently in force.

Second, Recital 2 of the Service Directive reminds us of its importance for SMEs and consumers:

A competitive market in services is essential in order to promote economic growth and create jobs in the European Union. At present numerous barriers within the internal market prevent providers, particularly small and medium-sized enterprises (SMEs), from extending their

operations beyond their national borders and from taking full advantage of the internal market. This weakens the worldwide competitiveness of European Union providers. A free market which compels the Member States to eliminate restrictions on cross-border provision of services while at the same time increasing transparency and information for consumers would give consumers wider choice and better services at lower prices.

Third, Recital 4 provides a very good illustration of the Services Directive's macroeconomic importance for the economy:

Since services constitute the engine of economic growth and account for 70% of GDP and employment in most Member States, this fragmentation of the internal market has a negative impact on the entire European economy, in particular on the competitiveness of SMEs and the movement of workers, and prevents consumers from gaining access to a greater variety of competitively priced services. It is important to point out that the services sector is a key employment sector for women in particular, and that they therefore stand to benefit greatly from new opportunities offered by the completion of the internal market for services.

Fourth, the Services Directive also points out why we need to help European SMEs: 'One of the fundamental difficulties faced, in particular by SMEs, in accessing service activities and exercising them is the complexity, length and legal uncertainty of administrative procedures' (Recital 43).

Fifth, the Services Directive stresses that cutting red tape is a key objective for the success of European SMEs:

It is necessary to provide in this Directive for certain rules on high quality of services, ensuring in particular information and transparency requirements. These rules should apply both in cases of cross border provision of services between Member States and in cases of services provided in a Member State by a provider established there, without imposing unnecessary burdens on SMEs. They should not in any way prevent Member States from applying, in conformity with this Directive and other Community law, additional or different quality requirements. (Recital 97)

Thus, the Services Directive is not just another directive among hundreds of others. It is a horizontal provision which has an economic impact on thousands of SMEs across all the EU member states and which helps to improve the lives of millions of European workers and consumers. However, any major economic policy measure faces some degree of resistance. And in this case there is some resistance to change and liberalisation, which can be seen in small local or sector-specific markets, whether at municipal, regional or even state level. It is at the local and regional levels that this resistance to change and liberalisation is strongest. This makes the work of a regional government more complex, as it has to reconcile implementing EU law with specific regional considerations and the reservations of much of its electorate.

The view from Galicia

Galicia is an autonomous community within the Kingdom of Spain. The Spanish constitution lists Galician as one of the country's three historic 'nationalities', along with

Catalonian and Basque. As part of a country which subscribes to the rule of law, Galicia holds that respect for the hierarchy of norms and legal procedures entails recognising the primacy of EU law and observing the relevant formalities.

Certain aspects of the Services Directive are complex when it comes to various economic activities, and in particular, those based in regions that share a border with another EU country. But legal certainty is crucial for economic development and social well-being, and thus, Galicia did not for a moment doubt the need to transpose the directive into its legal system. However, under the Spanish constitution, on which all the statutes of autonomy of the 17 autonomous communities in Spain are based, transposition of the Services Directive in Galicia was not possible until Spain's central government had submitted the basic legal framework to the national parliament, to ensure the proper transposition of the directive throughout the country.

Article 44 of the Services Directive sets a deadline of three years from 28 December 2006 for completing the transposition in each EU member state. However, the preparatory work was complex, and it took time for Spain's minority government to find the political support needed. Thus, the completion of the legislative bills was delayed until 2009. This, along with the time it took for the bills to go through the parliament (the Congress of Deputies and the Senate), meant that Galicia did not have the requisite national legal framework until the end of 2009—and for the retail sector, even a few months later.

To transpose the Services Directive and to help the various autonomous communities do the same, the Spanish parliament adopted three core laws. The first of these was Law 17/2009 of 23 November on free access to service activities and the exercise thereof (known as the 'Umbrella Transposition Law', it was published in the official state gazette the following day). The second was Law 25/2009 of 22 December, which amended dozens of laws to bring them into line with the 'Umbrella' law. (The second law is known as the 'Omnibus Transposition Law'. It was published the following day in the state gazette but entered into force on the day before the last possible date allowed by the Services Directive). The third and final law was Law 1/2010 of 1 March, which amended Law 7/1996 of 15 January on retail trade (published in the state gazette on 2 March 2010, it entered into force on 3 March).

The legal framework for transposing the Services Directive in Spain having thus been defined, Galicia moved quickly to adopt Law 1/2010 of 11 February (Galicia 2010a). This law amended a number of Galician laws to bring them into line with the Services Directive.

Previously, Galicia had approved Law 7/2009 of 22 December amending Law 10/1988 of 20 July on trade within Galicia (Galicia 2009). This it did precisely because of the uncertainty created among Galician traders by the far-reaching changes that were about to be brought in by rolling out the Services Directive. However, the delay in adopting the corresponding Spanish state law due to the significant pressure the actors involved were under

meant that Galicia subsequently had to adopt Law 13/2010 of 17 December on trade within Galicia (Galicia 2010b). The difficulty of the negotiations is the reason why the amendment of Spanish trade law was not included in the above-mentioned ‘Omnibus’ law.

Therefore, Galicia quickly took measures to ensure the effective implementation of the Services Directive in the community, taking into account the Spanish legal framework and the necessary procedures and formalities for informing the public before and after the parliamentary formalities.

A particular consideration to be borne in mind is that Galicia shares a long and porous border with the Portuguese Republic, with which it has significant historical, social, cultural and linguistic ties (there are many similarities between the Galician and Portuguese languages). One of the fears voiced by Galician interest groups regarding the effective roll-out of the Services Directive concerned cross-border professional services. This fear arose precisely on account of the social porosity of our common border with Portugal and the differences between Galicians and Portuguese in income and social contributions—all of which, theoretically speaking, ought to make Galicia’s southern neighbours more competitive.

Competitiveness is not just a matter of income, tax and social contributions. The training and education of workers and professionals, the integration of value chains, the availability of cooperative networks to achieve economies of scale and so forth—all of these factors are less obvious but equally or even more important. Moreover, nothing stands still in an open economy such as the European internal market. Above all, however, respect for the law—in this case the prevailing EU legislation—is the cornerstone of legal certainty, without which economic prosperity is impossible to sustain.

All of this meant that the Galician legislation transposing the Services Directive was the most advanced in Spain, going even beyond what was strictly required by the directive. Moreover, in implementing this legislation, we took executive decisions to maximise the effectiveness of the Internal Market Information System, mainly with regard to cross-border professional services.

The task of cutting red tape called for a considerable effort on the part of the Galician regional government—the government and public administration of our autonomous community. We wanted to approach this task as an opportunity rather than as a threat. First, work was speeded up as much as possible on extending e-government to all procedures, not just those for which the Services Directive was directly binding. Second, the time needed to issue administrative licences was reduced to a minimum, and the applicability of official statements and notifications was broadened to embrace the vast majority of procedures associated with the establishment of businesses and the provision of professional services. Third, the information channels connecting service providers and consumers were improved. Fourth, administrative charges were abolished or reduced. Fifth, the training of officials was stepped up so that, rather than just carrying out pre-emptive oversight, they would be enabled to act as facilitators for new economic activities.

It should be noted that public authorities that are closer to interest groups make greater and better efforts in the area of education and constructive dialogue than do those authorities that are further removed. The people of Galicia understand that, as in other areas of life, resilience and adapting to change are prerequisites for success in the economic and business worlds. It is not enough to tell people that a faraway, anonymous entity generally referred to as ‘Brussels’ requires things to be changed for the sake of goals that do not inspire confidence. On the contrary, regional authorities must learn to play a guiding and interpreting role. They have to convey to the national and European authorities both the fears voiced by our citizens and alternatives they suggest—citizens who, let us not forget, are also citizens of the EU.

Subsidiarity and the application of EU law

Subsidiarity was on the table throughout the European debate at the time of the 1992 Maastricht Treaty, which created the modern EU. It is addressed in Article 5 of the Treaty on European Union, which entered into force in 2009. According to Article 5(1), ‘The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.’ Article 5(2) further clarifies that ‘Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.’ Finally, Article 5(3) explains:

Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, 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.

Specialists in EU law consider regional authorities to have great responsibility in the area of the internal market (Wiehler and Stumm 1995). Without these authorities’ cooperation it would be impossible to properly implement EU provisions such as the Services Directive—which is perhaps the most ambitious of all the EU directives, and the one with the greatest direct impact on citizens. It is therefore well worth remembering that subsidiarity—especially as it concerns the regional level—is a vital component in the European legal, social and economic machinery. Regional subsidiarity is not limited to minor issues, at least not from a macroeconomic standpoint.

Galicia is a pioneer in cross-border cooperation with Portugal. This cooperation is firmly rooted in shared European culture thanks to the fruitful heritage of the Santiago Pilgrim Way. This was the major route for cultural exchange during what were possibly the least prosperous centuries in European history. Thus, Galicia is a region which boasts a wealth of experience in this field.

European regions, especially those with legislative powers, cannot confine themselves to merely being recipients of matched funding from the EU budget. They must

also take shared responsibility and work together as equal collaborators in implementing European law, even where it clashes with the status quo and the vested interests of certain minorities. This is necessary in the common interest of integration and cohesion.

Europe is in an increasingly complex, competitive situation within the global picture.

Between 1965 and 2015 . . . [t]he EU's share fell from about 13% to around 7% of the world population. . . . G20 members generated 86% of global GDP in 2016. The United States accounted for 25% of the world's GDP in 2016, ahead of the EU, whose share fell from 30% in 2006 to 22% in 2016. China's share of world GDP rose significantly from 5% to 15% during the same period, overtaking Japan (9% in 2006 and 7% in 2016). India's share of world GDP also increased significantly, propelling it from the 10th largest G20 economy in 2006 to the fifth largest by 2016. China and India had the highest GDP growth of all countries between 2006 and 2016. Note that these relative shares are based on current price series in euro terms, reflecting market exchange rates. (Eurostat 2018)

Therefore, in a context in which rising numbers of increasingly large, competitive stakeholders are interacting more and more, we need to increase our internal cohesion. Greater internal cohesion calls for respect for EU law but also more proactive implementation and enforcement thereof. Galicia has interpreted the need for greater internal cohesion in this way and is acting as an integral part of the EU within the Kingdom of Spain.

Moreover, improving the EU is a prerequisite for securing our well-being and that of future generations of Europeans. It is therefore vital that we become more competitive; and to do this, we have to fully realise the potential of our internal market. In this way, our businesses and professionals will grow in scale and be able to increase the diminishing share of the global market we represent. In this strategy, subsidiarity is an element which ensures that cohesion will be preserved. As the implementation of the Services Directive has demonstrated, European regional authorities have much to contribute, and they must do so to increase European citizens' shared engagement with and for the EU. Only the success of our EU can safeguard our prosperity and well-being.

Conclusion

The Autonomous Community of Galicia rapidly took measures to ensure the effective implementation of the Services Directive, and as a result, the community achieved the most advanced transposition of the directive in Spain, going even further than what was strictly required. This meant implementing several measures to cut red tape, and listening closely to interest groups in the process. It is important to remember that European regions, especially those with legislative powers, cannot confine themselves to merely being recipients of matched funding from the EU budget. They must take shared responsibility and work together in implementing European law, even where it clashes with the status quo.

Thanks to the principle of subsidiarity, citizens are being heard by authorities and thus are more involved in legal changes. These authorities, and especially those at the regional level, can also use the autonomy they have to bring about the proper transposition of the

directive. In this way a balance is achieved, which allows deep legal changes to be made in the way of doing business without stirring up significant social and political resistance among those who have to modify the services they offer or their business models.

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Subsidiarity as an experience and inspiration: The case for Regionomics in North Brabant

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Abstract

The principle of subsidiarity has been enshrined in European politics since the development of Catholic social teaching and the emergence of Christian Democratic parties, culminating in it becoming a core guiding principle for the actions of the EU. However the roots of the concept go far deeper than the simple interaction between the EU and other levels of government, as subsidiarity is a reflection of the relational and social characteristics of human beings and their mutual interdependence. In addition, the principle of subsidiarity should not only be considered in its vertical dimension between various levels of power, but also horizontally in terms of the interactions between different forms of organisation (e.g. state, civil society and the market). In the end, active subsidiarity is what distinguishes the European perspective on society from the Anglo-American emphasis on freedom and a just society.

Keywords

Subsidiarity, Regionomics, North-Brabant, Netherlands, Christian Democracy

Introduction

Subsidiarity remains an inspiring concept for a fair and effective design for the political, social and economic order. And it is precisely because it is a quite fundamental concept—having its roots in the image of men developed by Catholic social teachings and political theory (Holy See, Pontifical Council for Justice and Peace 2005)—that it needs to be reflected on regularly when seeking to apply it to today’s social, political and economic relationships.

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It is a fundamental concept because it is deeply rooted in (as well as reflecting) a specific image of humans and humanity. This views the former not just as autonomous individuals, but first and foremost as fundamentally relational and social beings. Christian Democrats often refer to the notion of humans being created in the image of God (*Imago Dei*). The meaning of mankind is to be there for and with others. This is the fundamental relational ‘meaning’ of man. In this conception the value of freedom is never that of individual freedom, as is, but of freedom that is always seen from the perspective of mutual and personal responsibility.

Such an image of humans implies the existence of some important normative notions that guide social, political and economic relationships. First of all, there is the (anthropological) notion of *mutual interdependence*. Man is not meant to live alone, but is dependent on his or her relationships with other human beings. Of course, humans can be *dependent* (e.g. as a citizen one must obey the law if that law has been democratically decided upon). And of course, one can be *independent* (e.g. as a consumer in the marketplace one can, in principle, select completely independently from among those who offer goods or services). However both situations are, most of the time, theoretical or in Max Weber’s terms: ideal–typical. It is clear that in most cases these pure forms of dependency or independence only apply in extreme and very specific situations.

Most of the time, humans find themselves in situations in which there is at least some interdependence. This might not be true in simple economic relationships, such as buying a plastic bucket at a hardware store, for instance, but it is true for the most important goods, such as care or education, which can even be considered ‘relational goods’ that have particular characteristics that a bucket would never have. The production quality of this type of good or service cannot be regarded as completely isolated from the ‘quality’ of its consumption. Consumption and production are more or less interrelated. The notions of co-production and relational qualities apply more to these goods than those of ‘mutual independence’ or ‘individual’ and ‘rational’ choice, and, more fundamentally, these notions also apply to how economies and social and political systems (should) function. Trust and cooperation are more important coordination mechanisms in this respect. The fundamental logic of this kind of relationship should be recognised in the way ‘production’ and ‘delivery’ are organised in social, political and economic systems. The principle of subsidiarity makes personal responsibility paramount. It is about putting human responsibility first—or making personal responsibility great again.

Subsidiarity provides an additional reason to limit government power. Limited government is most often promoted from a perspective of checks and balances, or to support a specific idea of personal or economic freedom. However, the concept of subsidiarity makes a specific contribution to the debate about the limits and vocation of government. It is there to enhance and protect an image of mankind: that of responsible people who should not be readily deprived of their obligation and ability to take care of not only themselves, but also each other, society and the community—that is, the common good.

Why have I included all these quite theoretical notions in a short contribution on subsidiarity? Because I want to make the point that in most discourses on subsidiarity in a

European context (e.g. in the latest report from the task force assigned to examine new initiatives to stress its practical meaning in European policymaking), it is predominantly conceived as something that helps us to properly organise competences and relationships in the *vertical dimension*—that is, between layers of government—and is seen from a predominantly hierarchical and organisational perspective. The concept is therefore used to ensure that as much responsibility as possible is left with the lower levels, which are closer to the people and their communities.

However, it is very important to note that this is only one of subsidiarity's important dimensions. This dimension stresses that the upper level should only act in situations in which the common good is best (or better) served by that level as lower levels cannot properly (efficiently or effectively) deliver the required goods and services. The main idea being that, as long as this is the case, the higher level has the legitimacy to act (e.g. the central government has legitimacy over its regional or local communities and the EU has legitimacy over its member states). However, the higher level should constantly reassess if this is still the case and, moreover, continually try to restore and improve the lower levels' capacity to act. At the recent summit in Bucharest organised by the Romanian national delegation of the European Committee of the Regions, this was defined as the mission to foster 'active subsidiarity'.

Subsidiarity, so much is clear, is not a static concept, but a dynamic one. This explains why, from time to time, the division of competences between the layers of government should be reassessed. A change in technology, for instance, could very well improve a lower level of government's (absolute or relative) capacity to act. The opposite might also be true. However, the normative imperative to honour and respect the lower levels' responsibility as much as possible is not the whole story of subsidiarity. In cases in which it is clear that government action lacks effectiveness and efficiency at the lower levels, the higher levels of government have a double obligation: (1) to act in order to prevent the common good from not being realised, and (2) to restore the lower levels' ability to act.

As can be seen, this is still discussing the principle's vertical and hierarchical dimension, the one which is commonly used in the 'European' debate on subsidiarity and which helps us to redistribute the tasks and responsibilities between the EU's institutions, its member states and its regions from time to time. Globalisation, migration and recent geopolitical developments, for instance, mean that there will be calls for a fresh assessment of the *Kompetenzkatalog* ('catalogue of competences'). While most of the time, the vertical dimension emphasises the ideals of deregulation and decreased regulation, in a more 'horizontal' understanding, more emphasis would be placed on improved regulation—in other words, on the *quality* of regulation.

The horizontal dimension of subsidiarity

In a more horizontal framework, subsidiarity refers to the notion that society can be seen as a conglomerate of different domains: the market, the state and civil society. These are specific domains with their own unique coordination mechanisms. In this

context, subsidiarity refers to the opportunity to serve the common good in ways that do not only or uniquely depend on government activities (at the various hierarchical levels, e.g. European, national, regional or local). To put it another way, horizontal subsidiarity refers to the organisation of government action to regulate in such a manner that it generally promotes, aids and supports communities and civil society organisations to act and take responsibility in all manner of domains (e.g. education, energy production and care). It could also refer to a situation in which markets, networks and non-governmental organisations are able to deliver all kinds of social services better than state authorities. Societal organisations tend to be more able to accommodate variety than state bodies.

The horizontal understanding of subsidiarity is probably more regional in application. At this level—often supported by ancient common and cultural identities—government, civil society and companies seem to work with each other more readily to further economic, social and ecological development. The secret of many regional policy successes is that at that level, markets (companies), civil society and government agencies are often more able and willing to work together closely. Since people tend to know each other better, it appears to be easier to coordinate all three domains to achieve fruitful collaboration. Coordination mechanisms tend to be positive (cooperation, high levels of mutual trust and confidence) rather than negative (mechanisms of control and coercion). Mutual trust and confidence tend to lower the transactional costs of horizontal forms of social, political and economic coordination.

Excessive regulation and bureaucracy often flourish where elementary forms or levels of social trust and confidence are lacking. Moreover, trust and confidence seem to be able to honour all kinds of variety, whilst regulation seems to breed uniformity and ‘equality’. Once again, it is not so much the quantity of regulations, as the quality of regulatory regimes that is important. Strong regional economies will not be able to flourish under those regimes in which quality is first and foremost understood as ‘e-quality’ (in the sense of homogeneity or uniformity).

These types of regulatory regimes tend to be less functional in innovation-oriented economies because the complexity of the learning and manufacturing processes demands environments in which mutual trust flourishes; regulatory regimes that asphyxiate or even destroy creativity are therefore absent. Here, too, it is all about relationships, mutual understanding and the low transaction costs of trust. These notions are especially relevant in the context of European regions competing in the era of digitalisation, industrial craftsmanship and the need for constant innovation.

Regionomics as a new horizon for subsidiarity

Subsidiarity as a concept is a permanent invitation to reflect on legitimate social and economic orders. Efficiency and effectiveness are thereby understood as important conditions for and dimensions of legitimacy. However, while both are necessary, they are not sufficiently crucial conditions. An effective, efficient economic order that is not ‘fair’

will endanger the long-term sustainability of its legitimacy. The notion of 'fairness' can be related to several characteristics of an economic system, including levels of income distribution, inclusion, ecological responsiveness and so on.

Another dimension of legitimacy that could also be taken into account is the degree to which an economic order is able to generate sufficient levels of mutual understanding and trust amongst the various stakeholders. An economic system could also be considered a fundamental part of a functioning human community. In this respect, the underlying notion of human dignity clearly views humans as more than just autonomous individuals. Each person combines elements of the *ens individuelle* and the *ens sociale* (Holy See, Pontifical Council for Justice and Peace 2005). Humans are relational in purpose. This means that a social order that reduces humans to a single dimension (i.e. either an individual or a member of a community) will not be 'fair'. Therefore, all forms of Reaganomics (i.e. the economic programme inspired by the neo-liberal Chicago School and economists such as Milton Friedman, which carries the name of the American president who promoted it¹), which primarily focuses on the values of individual autonomy and choice, will ultimately fail to be fair. Likewise, those regimes that deny the value of individual freedom will also experience the same one-sidedness and imbalance.

Subsidiarity is not just about allocating competences. It is, ultimately, about balance. It seeks a decent and legitimate allocation of tasks and competences between the various layers of government. However, horizontally, it also seeks equilibrium between society's various domains (the market, the state, civil society, families and individuals). Vertically, values such as effectiveness and efficiency prevail. Horizontally, however, dimensions such as trust and the social quality of communities are more important (although in both axes, all these dimensions are, to a certain extent, relevant criteria for evaluation).

In *Reaganomics*, the state (as a kind of arbiter for market relations) and the market (as an expression of individual liberty) prevail. Each has its preferred means of coordination: regulations and pricing. In *Regionomics*, both the state and the market are important actors in a more encompassing concept of 'communities'. These communities can be seen as 'ecosystems' in which a variety of actors are mutually interdependent. Naturally, there are strong and weak communities, and open and less open communities, but the notion of a community presupposes a certain level of trust. Most of the time such communities generate a certain degree of social trust, as well as high levels of social capital.

Brainport Eindhoven is an excellent example of a community-driven ecosystem that is characterised by a high level of mutual interdependence between the relevant actors (government, entrepreneurs, and education and research institutes). The transaction costs of trust are much lower than those generated by distrust. The importance of the social, cultural and institutional dimension of innovative regions is easily underestimated. Trust breeds cooperation and cooperation is crucially important to innovative ecosystems. In these systems, innovation increasingly takes a multi-partner, open form that requires all

kinds of co-creation and which would not thrive in a culture of individualism, or in a predominantly hierarchical regime.

This implies that, at a European level, the fundamental notions that have inspired our competitive policies should be reconsidered. These generally seem to reflect Anglo-American Reaganomics more than the European/Rhineland notions of Regionomics, which have a strong *Wahlverwantschaft* or ‘elective affinity’ with the social market economy. Innovation is, of course, also fostered by a certain degree of competitiveness. But fundamental innovations thrive much more in a context of cooperation (between companies and between social domains). And higher levels of cooperation in particular are fostered in regimes that are inspired by the kind of notions I have referred to in this short contribution, that is, the experience of subsidiarity. A Europe that needs innovation should invest more in Regionomics than in Reaganomics.

Conclusion

This article argues that reflection on the notion of subsidiarity should not be restricted to the vertical dimension, which focuses on the efficient and effective allocation of tasks between the European, national, regional or local layers of government. Nor should it be restricted to the domain of the state. In its horizontal dimension, reflection on subsidiarity will create active collaboration between different domains in society, and promote an active role for civil society and market organisations in the delivery of the common good. Cross-overs and innovative forms of cooperation between states, markets, citizens and civil-society organisations seem to be especially productive at a regional level, as this is the level at which coordination mechanisms such as mutual trust and interdependency are more likely to flourish. This is especially relevant in the domain of complex innovation, which demands close cooperation among knowledge institutes, governments and companies.

Note

1. Also often referred to as the policy preferences promoted by the neo-liberal ‘Washington Consensus’, which has guided economic and social policymaking in recent decades. See, e.g., Williamson 1989. For a critical assessment of the neo-liberal economic approach, see Deneen 2018.

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Subsidiarity in the service of regional policy: The perspective from Poland's West Pomerania region

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Abstract

Poland's local governments, introduced into the public administration system in two stages in 1989 and 1999, have become important actors in the development policy conducted at the national and local levels. Setting up voivodeships—the third-level units of local government—was particularly significant for building strong foundations for a comprehensive regional policy in Poland. Voivodeships create the conditions needed for the long-term economic and social development of their territories. That is why voivodeships should be governed by visionaries rather than administrators. The direct responsibility for regional development planning and programming positions their leaders as the coordinators of development activities in the region and the wise investors of EU funds. Their role must be reflected in the appropriate coordination of development activities at the local level and the ability to offer territorially sensitive financial tools to local communities.

Keywords

Poland, West Pomerania, Subsidiarity, Local government, Development, Regional policy

Introduction

Alongside the building of a democracy with a free-market economy in Poland over the last 30 years, the process of creating three levels of local government and reinforcing these by providing them with the necessary competences and resources has taken place. The scope of the tasks and responsibilities of the local governmental units varies depending on their level. The local governments closest to the citizens are liable for their basic

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needs, while the highest-level units of local government ensure the appropriate conditions for long-term economic and social development.

This article argues that there is often a tension between administrators and visionaries. It demonstrates how important it is that bureaucratic and visionary approaches complement and respect each other. The following sections describe the legal framework for Polish local-government activities at different levels and then look at West Pomerania's experience of providing solutions for collective action by local governments, especially through the use of territorial and inclusive instruments.

Towards strong and independent self-government in Poland

As early as the beginning of its transformation towards a market economy at the end of the 1980s, Poland created local governmental units on the scale of individual cities and communes. These entities of public administration, with their elected representative bodies and budget revenues, became important actors in the country's development policy. They gained power and the resources needed to satisfy the needs of local communities. However, these changes were not followed by solutions for the regional level, that is, the establishment of regional governments.

Poland's regional policy in the 1990s can be described as flawed, as it referred only to the government's policy towards voivodeships.¹ No other element, namely a regional authority elected by the inhabitants of the region, was considered necessary. The functions of such an authority were only partially performed by the voivode, who was the central government representative in the region. A fundamental change occurred from January 1999, when a comprehensive territorial reform, prepared in 1998, was implemented. As a result, the three-level territorial organisation of the state was introduced, within the framework of which *poviats*² and large voivodeships were established. Polish voivodeships correspond to the NUTS 2 level of European cohesion policy.³ The introduction of this framework made it possible to build the basis for the institutional set-up and instruments needed to implement European cohesion policy in Poland. At this administrative level, separate from the voivode, elected representative bodies—voivodeship governments—were established and voivodeship budgets were introduced. At the same time, many competences were transferred from the central level to the voivodeship level. The year 1999 marked the beginning of the existence of a comprehensive regional policy in Poland.

Another important change was related to Poland's accession to the EU in May 2004. As a result, the funds and solutions of the European cohesion policy became available to Poland. The first package of structural and cohesion funds, worth €8.4 billion, was received by Poland in 2004–6; another package, worth €67 billion (European Commission 2009), was launched for 2007–13. The third package of EU funds made available to Poland for the 2014–20 programming period amounted to approximately €86 billion (European Commission 2016).

Poland adopted European cohesion policy solutions in the areas of programming, management, financing, monitoring, evaluation and the selection of projects. One of the most important decisions made concerned the level of decentralisation in the management of structural funds. Poland adopted a relatively decentralised model, allocating a significant scope of resources and responsibilities for management to the voivodeship level and introducing—starting in the period 2007–13—regional operational programmes, managed by the voivodeship governments, in addition to national operational programmes.

Tasks facing regional governments

The scope of the tasks for which local governments are responsible, at both the voivodeship and the local level, are very broad and have a specific character (depending on the level); therefore the roles of the governments are defined in slightly different ways. The commune is the local government level closest to the inhabitants ('first-contact local government'), responsible for satisfying the day-to-day needs of the citizens by providing basic public services, and this is the space in which efficient officials operate. But it is not only that—the commune is also responsible for conducting development policy.

In contrast, the basic task of the voivodeship government should be to create conditions for the long-term economic and social development of the region. The Act on Self-Government at the Voivodeship Level—adopted in 1999—equips voivodeships with competences to conduct regional policy in many areas. The marshal—as the leader of the executive board chosen by the elected regional assembly—deals with a wide range of tasks: from providing special forms of support for branches of the economy and businesses to ensuring investment in education, culture and infrastructure—all based on a broader and more comprehensive understanding of development. It would seem that in this case, more than efficient administrators, visionaries—with passion and ambition—are needed.

However, there is a great need to create a solid foundation for both approaches: bureaucratic and visionary. The ability to look beyond the perspective of current policy and administrative action—at all levels of government—is rooted in experience and founded on a sense of responsibility. At the same time, it is the clerical attitude, that is, the attachment to realism and tendency to describe processes in terms of repetitive and transparent procedures, which underpins all successful and stable state institutions.

Both visionaries and bureaucrats have an important place in the modern state. If we talk about the need to build and strengthen self-government, it is not about defending some abstract status quo, but about reliable recognition of the state of affairs and the direction in which self-government in Poland and Europe is heading. Governmental structures may struggle—regardless of our will—to cope with the increase in global and European migration, the mobility of capital, environmental and climate challenges, and the decrease in the number of people coming into the world. Officials and visionaries, and there is a need for both, are the people who have the power to succeed or fail in

building these structures in this global context, and a rapidly changing world expects radical action, determination and competence.

An official with no vision—but who is effective in action—lives in a world in which the authorities can do everything or at least a great number of things. Such a world is first and foremost managed, and less understood and changed, as the need and potential for change, the benefits that can be achieved by it and also the upcoming threats it faces cannot be seen. We cannot afford for this to be the world in which we live, and this certainly cannot be the case for the Polish provincial governments. The government is only satisfied with the ‘office’ in its traditional form, that is, if it is based on authority that has an open, responsible and coherent concept of action. This is a forgotten but profound understanding of politics. Authority is the place in the social hierarchy which takes responsibility for the community and makes effective use of the available tools, in particular a corps of competent officials.

The right solution for our times and challenges should be the gradual transition from a structure focused on official efficiency to a model in which vision, knowledge and competence determine the space available for the efficient operation of the office and its interaction with the environment.

West Pomeranian self-government

In the regional government of West Pomerania both the attitudes mentioned above are being naturally balanced to an increasing extent. This is partly a question of generational changes, because young people—and the structures of the voivodeship government are increasingly becoming a place of work for ambitious young people—are usually characterised by visionary enthusiasm. It is also a result of overlapping difficult experiences. Political and economic changes, the collapse of large companies in the past, unfavourable demographic factors and even the peripheral location of the region in relation to the centre of the country are challenges that call for wisdom in action. If we talk about local government employees as ‘bureaucrats’, then it would be in the best sense of the word—connected with experience, responsibility and inventiveness.

Employees in particular departments who are responsible for specific fragments of reality know—or should know—the current approach of the voivodeship government in their given area, its objectives and, consequently, its expectations of entities operating in the region’s environment and, of course, the instruments it uses. This is the essence of development policy in the world of self-government and is what drives the objectives and functioning of local government. It is the policies that give rise to the strategy for action and to the distribution of funds, as well as to the prioritisation of investments and initiatives. Public policies refer to current ‘bureaucratic activity’, but they are built around a specific vision, and also around the programme and the concept of the world created by the regional government. However, what envelops these policies is clerical competence, meticulousness, knowledge and effectiveness in proceedings.

The development of both the commune and the voivodeship should not be thought of in terms of a strategy document—or a development programme, which contains a catalogue of objectives and identifies the directions of development—but in terms of a process: creating a vision and implementing it by mobilising people, resources and means, as well as directing and coordinating actions to achieve objectives. Local-government development policies evolve because their vision of the world and possibilities for action take into account changing conditions. However, the values do not change and nor do the criteria for assessing what is important. The mandate of those who lead the regional government remains the same, as does their power to define the objectives of action and take responsibility for the implementation of these objectives.

The marshal of Zachodniopomorskie Voivodeship is a leader who is not held hostage by a vision but tries to manage it effectively—through policies and all the other elements that together form the West Pomeranian Development Programming Model. At the top level this model forms a strategy for the development of the voivodeship, and this is closely integrated with a territorial dimension that describes the spatial development plan for the voivodeship. The second level consists of development policies, which define what lies under the voivodeship government's direct or indirect management in all areas that constitute its field activity, for example, in the economy, transport, health care and tourism. Its policies also define its relations with other government levels and local government—key partners for development.

The solutions adopted in Western Pomerania in the area of development policy can be seen as a 'happy medium'—they are preparing us for the future, but we have to work hard on them today. In two decades' time, the marshal will no longer be, first and foremost, the manager of EU funds, but the co-creator and implementer of the next stage of Poland's local and regional development, with less money from European cohesion policy and more in the way of national and regional resources, including financial means.

Self-government is irreplaceable in terms of activating the financial potential of communes and entire regions, establishing and activating development agreements, and establishing thriving areas around cities and large enterprises. In all this, the vision must be half a step ahead of the marshal, and the marshal must ensure that naturally conservative bureaucrats are not left behind.

A concept to be tested in battle

The West Pomeranian Development Programming Model has entered into force and its individual elements are gradually being implemented. This is not an easy or quick venture. Every office is, by its nature, conservative, and thus constitutes a pillar of the existing order. It is important for us to have the courage to gain new experiences by making contact with the external environment. Having a vision in local government can also be seen as being open to cooperation with external entities. This is an invaluable element of the public policies that have been implemented by the West Pomeranian Voivodeship government.

The direct responsibility for regional development planning and programming which rests with the voivodeship government positions it as a leader and coordinator of development activities in the region. The very concept of development today requires redefinition and a search for new tools to implement development policy.

Local government will not solve the world's problems, but it can be an instrument for organising development processes. It acts as an intermediary between what is local and what is national and European. Within regional self-government it is possible to build relations between local activity and entrepreneurship and wider contexts—with the interest of the state and the creation and use of support instruments overcoming local limitations. Development has a local dimension in essence, but requires the voivodeship as a support and stimulation mechanism.

Local Government Contracts

One of West Pomerania's unique concepts for the creation of territorial policy is the Local Government Contract. This is a negotiating tool for planning and implementing integrated projects important for the development of a given area, as defined by a voluntary agreement among a group of local governments. It is important that Local Government Contracts are created on the basis of cooperation between all development process partners present in a given area, which might include local governments, entrepreneurs, non-governmental organisations, and the education or science sector.

The Local Government Contract is one of the basic tools used for the implementation of interventions that form part of the Regional Operational Programme of the West Pomeranian Voivodeship (ROP) in the period 2014–20. Entities carrying out projects under Contracts have ring-fenced funds within the budgets of specific ROP priorities for the implementation of previously agreed projects. Each Local Government Contract outlines common objectives that focus on ensuring good conditions for economic development in the area it covers. An indispensable element of the Contracts is the bundling of projects: both infrastructural projects, related to the development of investment areas or ensuring better public transport, and those focused on improving the quality of human capital in relation to the needs of the West Pomeranian labour market. Because of the latter, among the bundles submitted under the Contracts one can find projects that focus on increasing the mobility of employees and developing curricula, especially in vocational schools. Modern vocational education must respond to the needs of local business. It is good that our local governments can see this so clearly, referring to its potential when investing in education.

The formula adopted for the implementation of interconnected, integrated projects undertaken both by local governments covered by a Local Government Contract and by other partners, such as entrepreneurs or non-governmental organisations, is of great importance to the success of this mechanism. Joint actions to economically develop particular parts of the region, and thus the entire region, are launched in a bottom-up manner. In this way, local governments, acting in partnership and with the support of regional

governments, are able to influence the economic potential and development of the labour market in a comprehensive manner, or reduce the limitations on this potential.

One of the six Local Government Contracts in West Pomerania, which covers the region's centrally located *poviats* (the 'Central Zone'), offers a good example of a bottom-up and multi-strand vision of supra-local development. Twenty local governments (3 *poviats* and 17 communes and municipalities) have agreed on a common strategy to reinforce the economic potential of the area, develop public services, and improve infrastructural conditions for economic and social growth. A bundle of 19 projects in fields such as infrastructure for investment areas, and the introduction of a comprehensive public transportation system and vocational education, was supported by nearly €10 million of ROP funding.

Local Government Contracts strengthen the co-shaping and coordination of development projects implemented jointly by local governments. This brings further benefits: it ensures the cohesion of local policies with the regional development policy, and increases the efficiency and effectiveness of the use of public funds, including those coming from the EU structural funds made available to the region.

Local Government Contracts provide an excellent laboratory for learning how territorial instruments work, with sensitivity for regional and local differences. They also offer an opportunity for local governments to take up challenges whose scale extends beyond the boundaries of a commune or district. It is thanks to these Contracts, among other things, that local governments now understand that many of the problems they face are difficult to solve on their own. Such a model also guarantees greater sustainability, even after the cessation of external financing. If a partnership is established for the development of potential and the removal of barriers that have previously been jointly identified, it will be more durable. As a result, local authorities will increase their competences and strengthen their ability to conduct policy, and will not just perform the basic tasks legally assigned to them. Going beyond this minimum is important.

Special Integration Zone

West Pomerania is characterised by heterogeneous levels of socio-economic development. Areas located around the Szczecin agglomeration and the city of Koszalin are more developed, while there are problem areas with relatively lower levels of development, including increasing marginalisation. The latter conditions result from the peripheral location of the region's main growth centres, that is, the Szczecin Metropolitan Area and the designated functional area of Koszalin.

The process of consolidating development deficits in problem areas, which are mainly the result of a weakening of the economy and the disappearance of jobs, particularly in rural areas, is also continuous. This is related, *inter alia*, to structural problems caused by the liquidation of State Agricultural Farms and the limited development potential of rural areas. These conditions constituted the premise for the formulation of a 'Special

Integration Zone' (SSEZ) in Western Pomerania, and for undertaking coordinated and comprehensive measures in relation to this area. The SSEZ was first designated by the regional government in 2014 and is subject to an annual update.

SSEZ delimitation is carried out on the basis of an analysis of the values of six synthetic measures assigned to particular problem areas: access to public services, demographics, technical infrastructure, problems of former state-owned towns, economic potential and poverty. On this basis, communes with the most serious deficits are identified. To determine the borders of an SSEZ, that is, the area with the most unfavourable indicators of social and economic development, the principle of the accumulation of deficits is adopted. This means that the SSEZ covers municipalities with deficits in at least three problem areas. As well as the methodology for determining the SSEZ, the principle of periodic monitoring and regular evaluation of the social and economic situation was also adopted, on the basis of which the territorial scope of the SSEZ is verified and the proposed directions of intervention are formulated.

The concept of intervention within the SSEZ envisages a concentration of activities in three thematic areas—infrastructural, economic and social. These correspond to the most important development deficits in this part of the region, which are both of historical origin and due to the unfavourable economic transformations and economic downturns in various sectors which have occurred over the last decade. Support is implemented using both European funds from the ROP and other public funds, which, in a model of close cooperation with local governments and under the coordination of the regional government, are transferred to the SSEZ in the form of 'bundles' of projects.

Conclusion

The region and its structures are not set once and for all. Thirty years of Polish self-government shows that some of these forms of government work while others are becoming less relevant. Today we are faced with the need to find appropriate instruments to respond to the needs of the entire region, and not only to strengthen the best areas but also to improve weaker ones. We have a great deal of experience, but with it there is the responsibility to better understand the region and its needs.

We face many risks. All over the world, including in Poland, both locally and regionally, human aspirations are growing rapidly. The response to this is often helplessness or populism—both are equally dangerous. However, its political role is only part of the function of regional government; it must also act on a daily basis in concrete ways to respond to the people, and this requires the ability to react quickly and effectively with an awareness of the short- and long-term consequences of any action. This ability lies at the heart of the management of European funds, but must also be reflected in important areas such as the creation of regional institutions; the development of the public domain and public spaces; and the reinforcement of community spirit, despite the increase in phenomena such as migration. Recognising the principle of subsidiarity in EU policies,

especially cohesion policy, should strengthen their territorial dimension. A strong territorial dimension inevitably leads to thematically integrated and spatially focused public intervention, increasing the effectiveness of the intervention and making its impact on a supra-local, regional and even supra-regional scale more sustainable.

It is not difficult to be the voice of the people, real or suppositious. Today—especially at the regional level—the challenge is to define power, to choose a form and scope of action that reflects the needs of the community and that also overcomes its limitations. Taking shortcuts or waiting for populism to rise up are both completely ineffective solutions. The local government must speak and act rationally and honestly. This is not only a task for the region’s managers, but also for wise, well-designed regional institutions, as this is a form of development cooperation with local governments and local communities. In the regional dimension, the notions of power and responsibility need to be thought of in new ways and require new definitions. If local government is to preserve its power and be efficient, it must learn to share responsibility.

It is also very important that awareness of the region’s potential and its development directions are reflected in the appropriate coordination of development activities at the local level. Development only takes place when regional government provides the support and encourages action in local communities that cannot cope on their own. We are capable of great achievements on our own if we are supported by the structure of government and, obviously, if such achievements are in accordance with our competences. It is important to trust in even those places most distant from the big cities, in the small communities that have their own ideas for life and development. There, too, development processes are available, and it is only a question of the extent to which we want to support them.

Notes

1. Voivodeships are the third-level (highest-level) units of local government in Poland, equivalent to provincial or regional divisions in many other countries; they are further divided into *poviats*.
2. *Poviats* are the second-level units of local government in Poland, corresponding to county divisions in many other countries; these are further divided into *gminas* (communes or municipalities).
3. NUTS 2 refers to administrative territorial units within EU member states that have 800,000–3,000,000 inhabitants.

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European defence policy and subsidiarity: The imperative of the EU level

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Abstract

Since the Treaty of Westphalia in 1648, defence policy, across Europe, has traditionally been the preserve of the nation state. That remains the default situation today, despite over two decades of movement towards a common EU security and defence policy. European leaders, ever since the 1980s, have insisted that the EU level is the most appropriate for this policy area, and public opinion appears to agree with them. Yet, despite many developments in the direction of a 'European army', and despite the launch of dozens of EU overseas missions, defence planning and procurement, as well as the deployment of forces, remain the preserve of the EU's national governments. Since 2016 we have witnessed an intensification of the move towards the EU level. This article argues that it is still too soon to determine whether a genuine shift away from the nation-state level is now in progress.

Keywords

European defence, NATO, CSDP, Subsidiarity, National sovereignty

Introduction

The classic instrument of national defence policy, enshrined during the French Revolution with the *levée en masse*, has been the conscript army. But rarely has such a force, on its own, proved capable of guaranteeing the defence of the nation (Taylor 1954). International relations theorists have demonstrated that, faced with the emergence of a great-power threat, nation states will react in one of three ways: balancing, band-wagging and buck-passing (Waltz 1979). Of these, the most prevalent is the

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formation of balancing alliances against the threat from an over-powerful state (Walt 1990). Subsidiarity argues that each policy area will take decisions at the most appropriate level. In the area of defence, however, we have witnessed an ongoing tension between the national level and the EU level. Although states have clung rigorously to the principle of national sovereignty, the reality is that most of them have sought security through collective arrangements with other states. In fact, the greatest example of this since the end of the Second World War has been the existence of NATO, which introduces the concept of the Atlantic level. Despite the discursive veneer and institutional framework that cloaks NATO as an alliance of equal sovereign states, the reality is that all NATO members essentially abandoned—or pooled (depending on one's political perspective)—their sovereignty in a collective entity, ultimately seeking refuge under the US nuclear umbrella.

Such an arrangement was far from ideal. Not only did it involve the relative subordination of most states' foreign policy to US preferences, but it did not offer a cast-iron guarantee of national security. Once the Soviet Union acquired nuclear weapons,¹ and particularly once it had mastered the engineering of intercontinental ballistic missiles capable of targeting US cities, the proposition that a US president would be prepared to sacrifice Boston in the defence of Bonn lacked credibility. NATO's introduction of the doctrine of flexible response in 1967 (Daalder 1991) left European states at the mercy of an indeterminate defensive posture in which the passage from conventional deterrence to nuclear war remained a function of US presidential interpretation.

Under President de Gaulle, France opted out of NATO's integrated military command and pursued a national nuclear deterrent (Vaïsse 1998). Towards the end of the Cold War, the Euromissiles crisis, sparked by the deployment of both Soviet and American nuclear missiles with potential 'first strike' capability (Nutti et al. 2015), led to the first inchoate efforts by European states to break out of the perceived straitjacket of subordination to US presidential politics. Meeting in The Hague in 1987, under the guise of the 'Western European Union', the leaders of Europe's only dedicated defence institution insisted that European integration could never be complete until it had been 'extended to security and defence' (Western European Union 1988, 37–45).

Towards the European level in defence policy

Thus, even before the end of the Cold War, European security and defence policy was framed as ideally operating at European—rather than at national—level (Howorth 2000). Over the next decade, this approach was formally adopted by EU leaders on several occasions. The Treaty of Nice (2000), the Constitutional Treaty (2004) and the Treaty of Lisbon (2009) all asserted that the eventual aim of the EU was the forging of a common defence policy. The wording of Lisbon is clear—while remaining shrouded in ambiguity: 'The common security and defence policy shall include the progressive framing of a

common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides' (art. 42).

Interestingly, this perspective, which seemed self-evident to Europe's leaders and political class, has long been shared by European citizens. Over the past 25 years, the European Commission's Eurobarometer surveys have regularly shown that between 75% and 78% of those surveyed have indicated that they believe security and defence policy should optimally be conducted at EU level (European Commission 1993; European Commission 2018). The responses vary from country to country, with Cyprus (90%) and Latvia (87%) being the most positive. Yet even the least positive, Austria (57%) and the UK (63%), post significant majorities in favour of a common defence policy (European Commission 2018). The socio-economic breakdown of these figures is also revealing. Those with the highest levels of education post the highest degree of support (79%), with the less educated being less favourable (68%). Those at managerial level are more positive (81%), whereas those working in the home are more sceptical (67%). Those with few financial problems are more supportive (77%) than those in financial difficulties (66%). The higher a respondent situates himself or herself in terms of social class, the more favourable he or she is likely to be.

However, what these respondents understand to be the practical consequence of their support for an EU-level Common Security and Defence Policy (CSDP) is a slightly different matter. A clear majority (55%) of all respondents are in favour of the creation of a European army (16% being 'totally in favour' while 39% are 'somewhat in favour'). Opposition to a European army is expressed by 39% (22% being 'somewhat opposed' and 17% 'totally opposed'). Since 2015, there has been a 2% increase in the proportion of respondents favouring such a development. Across the EU, support for a European army finds majorities in 20 countries, ranging from the most favourable, the Netherlands and Belgium (74%), to the least enthusiastic, Malta (55%) and Denmark (52%). It is noteworthy that Denmark, which has an opt-out from the CSDP, still musters a slight majority, both in favour of a common policy and in favour of a common army. Majorities in only three countries are clearly opposed to the notion of a European army: Sweden (58% against), Finland (55%) and the UK (55%). In Ireland and Austria, more citizens are opposed (49% in both) than in favour (46% and 45% respectively). Yet, behind these raw statistics, whose findings should be treated with the usual social-scientific caution, there is clearly very little consensus on precisely what is implied by a security and defence policy being conducted at EU level (European Commission 2017b).

For centuries the key symbol of *national* defence has been the conscript army, geared to territorial defence and resistance to invasion. After the Cold War, as the EU began to consider a common defence policy at EU level, such national forces seemed ill-adapted to the requirements of the time. The wars in the Balkans throughout the 1990s, followed by destabilisation throughout the Middle East and North Africa, called for a serious European crisis-management intervention force—for which conscripts were neither militarily trained nor legally deployable. At a meeting at Petersberg Castle (near Bonn) in

June 1992, European military planners set about defining the tasks such a force might be required to fulfil, corresponding to three levels of combat intensity: ‘humanitarian and rescue tasks; peacekeeping tasks; tasks of combat forces in crisis management, including peace-making’² (Ortega 2005). This approach required a radical transformation of the EU’s existing capacity to provide deployable, professional intervention forces geared to ‘out of area’ crisis management. What did this imply?

The first task was to end conscription and to move towards all-volunteer forces (King 2011). At the end of the Cold War, only four of today’s EU member states had all-volunteer forces: the UK, Ireland, Luxembourg and Malta. Belgium announced the abolition of conscription in 1992 and ended it in 1994; the Netherlands followed suit in 1993 and 1996. France and Spain decided on abolition in 1996 after agonising debates about the connection between the armed forces and democracy. In both countries, the last conscripts departed in 2001. Since that date, a further 17 EU member states have abolished conscription.³

The motivations for abolition varied from country to country. Most, such as Belgium, Spain, and many Central and Eastern European states, sought to focus on the downsizing of the military budget; others, including the Netherlands, France, Germany, Poland and Italy, aimed to transform their militaries into deployable forces for overseas crisis management (Joenniemi 2006). In 2013, only 6 EU member states, out of 28, retained conscription. Greece and Cyprus are concerned about Turkey. Finland and Estonia remain concerned about Russia.⁴ In Denmark and Austria (where, in January 2013, a referendum retained conscription by 56%), retention is largely connected with identity. To all intents and purposes, Europe today has fully professional armed forces. However, each of these forces remains tightly tied to its national framework. Professionalisation has not led to Europeanisation in any structural sense.

Since 2003, it is true, the EU has conducted 36 overseas missions under the guise of the CSDP, of which 16 (6 military and 10 civilian) are ongoing (EEAS 2019). These missions can be broken down by type in a variety of ways, but the reality is that a very small minority of them are strictly of a military nature: six involving land and air forces, two naval operations and three training missions. The remaining 25 cover policing, border assistance, capacity-building, rule of law, security-sector reform, and various forms of monitoring and advice (Howorth 2014, 144–89). In all cases, forces have been temporarily assigned from national contingents and returned to their home bases once the mission has been terminated. In the case of the major military missions, command structures have been supplied either by NATO (EUFOR *Althea* in Bosnia) or by national operational headquarters (OHQ): EUNAVFOR *Atalanta* in the Gulf of Aden (UK); Operation *Artemis* in the Democratic Republic of Congo (France); and EUFOR *RD Congo* (Germany). Owing largely to resistance from the UK, the EU has never been able to generate its own fully functional OHQ, having to make do with a small EU Civil–Military Planning Cell. This absence effectively consigned several potential EU operations either to a minimal size (Chad in 2008) or to non-existence (Libya in 2011). After the UK

referendum in June 2016 and the launch of Brexit, EU leaders once again pushed for the need for an OHQ, but sustained objections from London resulted in this facility being yet again downgraded to a small-scale Military Planning and Conduct Capability, designed to be used for ‘non-executive’ missions (essentially military training missions) (EEAS 2018). Plans to move towards a full-scale OHQ must await the UK’s eventual departure from the EU. To date, concrete moves towards a meaningful armed force at EU level remain strictly limited.

Indeed, very few of the activities subsumed under ‘crisis-management intervention’, whether military or civilian, are really an expression of ‘European defence’ per se. Collective defence remains, in all official discourse, the responsibility of NATO. Nevertheless, in 2015 the EU28 spent \$227 billion on ‘defence’. That is a considerable sum. It is, however, less than 40% of the US defence budget for that year (\$597 billion) and it has been falling in relative terms. In 2008 the collective EU defence budget was equivalent to the combined defence budgets of the eight next biggest defence spenders (China, Japan, Russia, Saudi Arabia, India, Brazil, South Korea and Australia: \$289 billion), which included all the ‘rising powers’. In 2015 it was dwarfed by those powers, with China and Saudi Arabia alone spending more than all EU member states put together. The EU gets very little bang for its euros.

Out of that considerable overall ‘defence’ outlay, the EU28 have been attempting to fund 28 separate armies, 24 air forces and 21 navies. Furthermore, just three countries in the EU (France, the UK and Germany) together account for over 60% of the combined EU28 defence budgets. And if Italy is added to the trio, the four nations alone contribute over 70% of total EU defence expenditure. The only one of the new accession states with any significant military clout is Poland, which has tripled its defence budget in the past decade and ranks (at \$10.3 billion) in fifth place in the EU28. Many member states (and not just the smallest ones) are effectively cheap riders. The average defence budget of the 15 lowest-spending EU member states (who collectively account for barely 5% of overall EU expenditure) comes to just over \$800 million. That is less than the defence budget of Côte d’Ivoire. One might ask exactly what those nation states believe they are buying with their money. In the view of one leading expert, much of the money the EU spends each year on defence ‘is simply wasted’ (Witney 2008). The case for the rationalisation—and indeed the Europeanisation—of this defence spending is overwhelming. Measures to this end are overdue.

The 2016 ‘relaunch’ of the CSDP

Since 2016 we have witnessed a relaunch of the CSDP project, with new initiatives on several fronts (financial, industrial, operational and strategic) appearing with sustained regularity (Howorth 2017). How can we assess these developments? A genuine shift from the national to the EU level in the field of security and defence policy would require four developments. The first would be the political recognition on the part of all member

states that such a move is of the highest strategic priority. This appears to be the conclusion that can be drawn from this new intensive focus on the CSDP.

The second would be a concerted assessment of the optimum different configurations of member states for specific security and defence objectives. This has begun to take on a multiplicity of forms—but in a random and uncoordinated fashion. There are currently, in addition to NATO, four groupings of states in the defence realm with very different ambitions. Many analysts have focused on the EU's Permanent Structured Cooperation (PESCO) as the one major breakthrough that looked genuinely promising (Biscop 2018; Mauro 2017). PESCO was initially intended to generate a vanguard of the more militarily competent states to forge ahead with defence projects. However, ironically in this instance, the inclusion of all but three member states (the UK, Denmark and Malta) has loosened the intended bonds, with the result, according to one expert, that 'the vanguard has become a convoy'—with Poland in particular 'aiming to slow the whole process down' (Witney 2017).

Germany's Framework Nation Concept, devised within NATO, has created a grouping, under German leadership, of 17 states from Central, Eastern and Northern Europe to focus on building up a significant military force to deter Russia. A UK initiative, the Joint Expeditionary Force, embraces Britain and the Scandinavian and Baltic states, and is intended to demonstrate both that states in the northern region take Russian aggression seriously and that the UK can remain a European leader even after Brexit (Saxi 2017). The French plan is for a European Intervention Initiative designed to lead to European strategic autonomy. This initiative lies outside both NATO and the EU. France has been highly selective in its partners. Only 10 countries are involved (Belgium, Denmark, Estonia, Finland, Germany, the Netherlands, Portugal, Spain and the UK). Rather than a collective thrust, Paris envisages multiple bilateralisms, all under direct French command. This has been interpreted as a French counter to the German Framework Nation Concept and a sign that Paris has grown weary of in-fighting over the direction of PESCO (Taylor 2018).

It is hard to see these four separate initiatives in any light other than a competitive one. The three biggest states in Europe—plus the EU itself—all want to trail-blaze towards a European defence capacity worthy of the name. If this is the new reality of Europeanisation, then it does not look good for the EU.

The third requirement for an EU-level defence capacity would be the design of mechanisms aimed at rationalising defence spending and facilitating strategic planning. The 2017 launch of the European Defence Fund seems promising. The involvement of the European Commission in offering funding for both research in innovative defence products and technologies is a positive development (European Commission 2017a). Clusters of nation states can now bid for the type of defence equipment they believe best serves their needs. Yet the annual seed-corn sums involved (€25 million for research and technology and €500 million for development and acquisition in 2017), while not insignificant, are extremely modest. Those who perceive this new

development as revolutionising European defence funding might be advised to reserve judgement (Valasek 2017; Besch 2017). Plans for a European Security Council that would accelerate and intensify strategic thinking and military decision-making are also innovative, even though to date the precise outlines of such a body remain unclear (Nováky 2019).

Conclusion

The final requirement would be a central political authority with both legitimacy and a clear mandate to implement a grand strategic objective—in other words, something akin to a traditional nation state. In the realm of defence, the EU remains at some distance from achieving that goal. Almost all EU member states have preferred, ever since the late 1940s, to sidestep the sensitive problem of European leadership by looking to the US to deliver this key function. At a time when President Trump seems to be calling into question the US desire to continue to play this role—even speaking openly of withdrawing the US from NATO—the challenge of establishing what President Macron consistently refers to as ‘European sovereignty’ appears inevitable, but remains as daunting as ever. The EU member states appear to *aspire* to take defence to a collective EU level, an aspiration that seems to be supported by their populations. They have given themselves a significant number of instruments with which to cross that vast Rubicon. However, they currently find themselves caught in mid-stream, with no assured means of making it to the opposite bank.

Notes

1. On 29 August 1949, on learning of the first Soviet nuclear test, General de Gaulle wrote in his diary: ‘Ceci change tout’ (This event changes everything).
2. This latter formulation was a euphemistic way of saying ‘war-fighting’, a term which was unacceptable to Germany.
3. In 2010, Sweden ‘suspended’ conscription *during peace time*, which meant, in effect, a shift towards an all-volunteer force. In 2017, this decision was modified owing to perceived threats from Russia and 4,000 young men and women will henceforth be enlisted for basic training (Government Offices of Sweden 2017).
4. Estonia was considering ending conscription prior to the Russo-Georgian War in 2008, but abandoned the idea after that conflict.

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Subsidiarity and the moral foundations of populism

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Abstract

Across Europe there is growing concern about populism. In this article populism is analysed through the lens of Jonathan Haidt's moral foundation theory. People make choices, including political choices, based on their morals. Political families also base their policies on moral foundations. The article analyses this phenomenon and identifies both the opportunities it provides for the European People's Party (EPP) and the threats it poses. The opportunities have to do with a special feature of conservative parties: they address the entire spectrum of moral foundations while other political families specialise in one or just a few of those foundations—this is even truer of populists. This factor also forms the threat to the EPP: while others can specialise, the EPP family must stay balanced and broad. The other way to address populism is through subsidiarity—the closer people are to decisions, the less abstract they are and the less they are guided by moral foundations, and thus there is less opportunity for populism.

Keywords

Populism, Moral foundations theory, Subsidiarity

Introduction

Populism is becoming an increasingly large concern for mainstream political parties. Sometimes it seems to be receiving even more attention than poverty, unemployment, stagnant productivity, climate change, migration and foreign policy, among other issues.

This article provides an analysis of the roots of populism based on Haidt's moral foundation theory. It will show that populism is successful because (a) it addresses the real concerns of voters and (b) it does so by relying on the moral foundations on which

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voters base their instinctive decisions. In the sections that follow, the article presents moral foundations theory and existing narratives about populism. It then uses this toolset to analyse political families in Europe and the various flavours of populism. Subsequently it looks at the different types of populism through the prism of subsidiarity, breaking down the analysis onto three levels—European, national and regional/city level. The paper concludes with some recommendations on how to address populism and in what way the principle of subsidiarity can be used as a tool to fight it.

Moral foundations theory

Moral foundations theory ‘proposes that several innate and universally available psychological systems are the foundations of “intuitive ethics”. Each culture then constructs virtues, narratives, and institutions on top of these foundations, thereby creating the unique moralities we see around the world, and conflicting within nations too’ (Moralfoundations.org 2016). The theory identifies six moral foundations (Haidt 2012):

1. On the care/harm foundation rest our feelings of compassion for the weak, our instinct to help our fellow people, our desire to care for the young and the elderly, and so on.
2. On the fairness/cheating foundation rest our feelings for what is fair, how much altruism we are willing to express, where the balance is between helping someone who is in need and not helping someone, and our ability to decide who is just looking for a free ride.
3. On the liberty/oppression foundation rest our dislike of being commanded and dominated, and our desire to be free, without interference in our lives.
4. On the loyalty/betrayal foundation rests the cohesion that groups—such as tribes and nations—exhibit.
5. On the authority/subversion foundation rests our respect for authority and leadership.
6. On the sanctity/degradation foundation rests our respect for the clean, the pure and the sacred. This includes the divine, but may also give foundation to environmental and sustainability concerns.

It is on these foundations that religions built their moral systems. The Ten Commandments, for example, could easily be mapped onto these foundations, as could the seven deadly sins or the seven virtues. There are evolutionary reasons for the emergence of each foundation. Groups and individuals that acted morally—that is, according to these foundations—had a competitive advantage over other groups. Not only could they teach their morals to a larger surviving young population, but these foundations are to some extent even genetically inherited. For example, the feeling of compassion for the

suffering, which builds on the care/harm foundation, is common to mammals in general, not just humans. It is not learned, it is innate.

The moral foundations provide the bedrock on which the mostly intuitive (but also rational) decisions of individuals are made. They tell them what *feels* right and what *feels* wrong even before it can be rationally argued as to what *is* right and wrong. Political decisions and preferences, trust for some rather than other politicians and so on, are, as we know, often decided intuitively. Speaking to the hearts of the voters rather than their minds is one of the most frequent recommendations of political campaigning. Thus addressing the moral foundations means speaking to the heart.

Populism

Populism is not a well-defined concept. Mudde defines it as ‘a thin-centred ideology that considers society to be ultimately separated into two homogenous and antagonistic groups, “the pure people” versus “the corrupt elite,” and which argues that politics should be an expression of the *volonté générale* (general will) of the people’ (2004, 542–63).

The literature attributes three features to populism (Sözen 2010), but as we will see, they are not exclusive to populists.

1. Populism addresses problems emotionally and suggests that there are simple solutions—which, however, only work in the short term and fail in the long term. It speaks to instincts and looks for moral foundations, but so do traditional parties. Traditional parties are also not really known for their long-termism. This will be explored further below.
2. Populism creates two antagonistic camps: typically the people versus the elites. Laclau argued that ‘constructing a people is the main task of radical politics’ and that populists speak of ‘the people’ or ‘the little man’ (2006, 646–80). However, these two camps can also be us versus them, rich versus poor, makers versus takers or locals versus foreigners. These distinctions are also used by traditional parties.
3. If in power, populists would prefer efficiency over checks and balances, would be anti-pluralistic and would suppress views other than their own. Typically populists create a personality cult.

Across all three features it is hard to draw a sharp line between populists and non-populists. Every political party takes the actions above to some extent. In the end, as Krastev wrote, it is the self-declared anti-populists who define who is populist and who is not (Krastev 2007, 56–63). Furedi (2016) quips that the anti-populist elite can ‘displace its anxiety about its lack of legitimacy, its isolation from the public, and transform it into the public’s problem: the problem of populism.’

The left would present populism as a kind of fascism-lite and conservatism as a kind of populism-lite. Some on the left would see all three as a single enemy. This is a dangerous framing of the issue and one which the analysis in this article will refute.

The right sees populists as those that have rude, anti-democratic answers to acknowledged problems, while in contrast their answers are sophisticated and democratic. For technocrats, populists are those who can talk to people and rally the voters, a talent which they do not have. Populists themselves would quote Bell, who said that populism is ‘optimism about people’s ability to manage their own affairs relative to the ability of an elite to do so for them’ (Bell 1992, 3).

Roots of populism

A distinction needs to be made between the superficial reasons for the rise of populism and deeper issues. In the view of the author, the more superficial triggers of populism are (1) the economic crisis and the perceived stagnation for the working and middle classes; (2) migration and other security issues; and (3) the general state of well-being and security, in which voting decisions do not have much of an impact—the programmes, but even more so the execution of them by the traditional parties, leave little room for differences—voting the ‘wrong’ way carries little real-world risk.

The author believes that the deeper causes of populism include the following:

1. *The increasing redistribution of wealth by the state.* This creates the illusion that free lunches are possible, particularly when funded by borrowing. The proto-populist belief that miracles exist primes voters for other flavours of populism.
2. *The increasingly technocratic character of governance on both the left and the right (with few real differences).* Populists, at least, are different.
3. *The cultural crisis, globalisation and multiculturalism.* As a result of these and other developments, the safety of the familiar and of traditions has been disappearing.
4. *The communication revolution, the Internet and social media.* Not only is the political sphere flat—each person has one vote—but so too is the media sphere—each person can have a Facebook account or blog. Anyone can publish anything, not just the intellectual elite as was the case when the concept of democracy was defined.
5. *The technocratisation of the mainstream political parties.* In the hierarchies of the existing parties, those who have advanced through the ranks are not people who can naturally connect with voters, but those who are good at networking, winning petty office battles and getting public-relations support. As a result these parties have gradually lost touch with the voters.

Moral foundations and politics

Not all moral foundations are equally important to each person. What Haidt (2012) found was that the left (progressives, Social Democrats, socialists) build their attitudes mostly on the care and fairness foundations; the classical liberals and libertarians build theirs mostly on the liberty foundation; and the right (Christian Democrats, conservatives)—unexpectedly—gives rather equal importance to all six foundations. These foundations are universal. Vauclair and Fischer (2011) found that the variations within countries and cultures are much larger than the differences between them.

When investigating how they view their political opponents, those on the right were found to correctly believe that the views of the left are mostly based on the care and fairness foundation. Those on the left, however, were found to be wrong in their belief that the views of the right are based only on loyalty, authority and sanctity, and less on care, fairness and liberty. We can add that this misperception by the left is also reflected in the usual picture presented by the media about political agendas, where social policies are often presented as being the exclusive domain of the left. They are not, and the findings of moral foundations research can explain this.

This misperception has two consequences. First, it makes dialogue between the left and the right more difficult. The more dangerous consequence, however, is that consensus-driven politics is tempted to claim that, since the first three foundations are common to all political parties and understood by all people, this is what public policy should be about. Everything else (i.e. the foundations of loyalty, authority and sanctity) is ‘divisive’, and thus contributes to breaking down the harmony in society.

The fact that there is broad consensus about some moral foundations and less about others makes the ethics of reciprocity rather problematic. The golden rule—treating others as one would like to be treated—only works for the left. Everyone will treat others with care, fairness and liberty in mind. But conservatives will be deprived of reciprocity in acts which are founded in loyalty, authority and sanctity.

Moral foundations and populism

Table 1 presents the author’s analysis of the moral foundations and their relationships to populism, more specifically, to policies that stir up emotions, and exploit people’s prejudices and fears. These policies—addressing not the rational but the passionate side of people—have to be grounded in the same moral foundations as the basis for these emotions and prejudices.

Moral foundations and European political families

Table 2, below, summarises the attitudes of the political families according to the six moral foundations. Until the emergence of populists, the European People’s Party (EPP)

Table 1. Moral foundations: evolutionary source, centrist use and radicalisation.

Foundation	Evolutionary source	Modern centrist interpretation	Populist radicalisation
Care	Caring for group members, increased chances of survival for all	Social safety net for those not fortunate or successful	Massive redistribution of wealth under the 'care' pretext; extreme green policies as in care for all living creatures.
Fairness	Fair rewards stimulated those who were hardworking, increased access to food	Equal opportunities, suppress wealth differences in society	Expropriation of the wealthy, nationalisation, active promotion of equality in society; also extreme green policies.
Liberty	Maximisation of use of creativity and ingenuity if at liberty to do things in one's own way	Liberty of one ends with the liberties of fellow man	John Galt's oath: 'I swear, by my life and my love of it, that I will never live for the sake of another man, nor ask another man to live for mine' (Rand 1957, 993).
Loyalty	'All for one, one for all' groups were stronger than those where selfishness prevailed	Limited patriotism, some towards EU as well	Loyalty to nation: nationalism. Loyalty to working class: communism. Loyalty to Gaia: green extremism.
Authority	Well-led groups were more successful than poorly led groups.	Respect for the rule of law (rather than the rule of men)	Respect for leaders, party leaders, charismatic individuals. Or extreme disrespect for authority, property rights etc.
Sanctity	Clean living environment and practices prevented disease; that which was commonly held to be sacred improved group cohesion, lessened uncertainty, provided the meaning of life.	Pushed into the private sphere, not actively promoted by government	End of separation of church and state/maintenance of state and church not separated, as in theocratic and shariah regimes.

Source: Author's compilation.

was quite alone in building on loyalty, authority and sanctity. Its attitude towards the care foundation is not too dissimilar to that of the left, but it has a very different attitude to fairness than the left. With liberals it agrees partly on liberty and fairness, but much less on loyalty, authority and sanctity.

Any analysis that uses moral foundations theory as its basis would identify populists within each of the foundations, because a key element of populism is playing to emotion.

Table 2. Moral foundations and their interpretations by political families.

Foundation	Conservatives	Socialists	Liberals	Greens	Populists
Care	Care for our family, our children, also care for all others in social policies	Care for anonymous fellow human beings	Care for immediate family members, kin	Care for all living beings	Exploit care foundation for social policies even more than socialists
Fairness	Fairness as in equal opportunities, but not equal outcomes	Fairness as in equality of outcomes	Understood in the same way as conservatives	Extend the concept of fairness towards all living beings, nature, Gaia etc.	Fairness just for the true people, not for the elites
Liberty	Focus on economic liberty, balanced with fairness and care	Focus on liberty from consciousness and tradition; social and personal liberty, gay marriage; against economic liberty as it conflicts with fairness	Economic, social and personal freedom	Against economic liberty, for personal liberty	The individual should sacrifice herself for the group
Loyalty	To nation, to religion, to Europe; less so to man-made inventions	Loyalty projected onto institutions such as football club, class, company, profession	Share similar scepticism of the concept as socialists	To Gaia	Very strong loyalty to the nation but not to Europe
Authority	Respect for law, government, politicians	-	Even less respect for authority than socialists	-	Looking for an authoritative leader
Sanctity	Respect for Christianity, traditional marriage, life, other living beings	-	-	Purity of the body expressed by not eating some foods; cleanliness of nature	Respect for private, niche 'sacred' things, not one thing that would create cohesion in society as a whole

Source: Author's compilation.

Moral foundations, populism and subsidiarity

Subsidiarity is the political principle by which decisions are pushed down to the lowest level at which they can be made. In principle, the lower the level on which decisions are

made, the more specific they are, particularly at the town and village level where they address tangible investments or particular local institutions. There should be less room for populism on this level. Of the issues listed above, the populists would have limited opportunity to exploit the economy and migration on a local level—for example where local security and jobs are at stake. Locally it is also more difficult to spread fake news and demagoguery about issues because people have first-hand information. The deeper causes listed (see the section on ‘Roots of populism’) have less relevance at the local level than at the national or even EU one. The only advantage populists have on the local level is that they may be more able to address the voters directly. But in general—taking the details of Tables 1 and 2 into account—populists have an easier job on the national level, and an easier one still at the European level. The European level is particularly vulnerable to protests, due to the potential votes by those who believe that politicians have ‘no skin in the game’, as described in trigger 3 and cause 2.

Therefore, Jan-Werner Müller is wrong to stress that ‘it is a matter of urgency to think about the way in which supranational institutions such as the European Union should try to defend liberal democracy from populists-in-opposition and populists-in-government’ (Müller 2013, 138–49). Indeed, it might be tempting for institutions known for their democratic deficit and distance from the voters to do what Müller suggests. If the EU institutions choose to try to save democracies from populists in member states this will (a) only give more strength to the populists’ argument about the undemocratic nature of the EU and (b) set a precedent for interventions from other directions should the populists grow stronger in Brussels. On the contrary, populists should be addressed and defeated using the subsidiarity principle, that is, at the lowest level possible. In this regard, the EPP with its broad moral foundations has some unique opportunities that will be addressed in the conclusion.

Conclusion

From the moral foundations perspective, the strength of the EPP is that it is the only large political family that can sincerely ground its policies on all six foundations. It can, in its messages, address the entire spectrum of beliefs and intuitions that people hold dear. The weakness of the EPP’s position is that it is presented by its competitors as only caring about the latter three foundations—loyalty, respect and sanctity. This is not correct. Its voters care for those as well, but could be won over by the left due to this false assumption. It is recommended that the EPP promotes a strong message about care, fairness and liberty, directed at the authentic interpretation of these foundations: also stressing care within families, fairness that does not support free rides and liberty which does not clash with the sanctity foundation.

The threat to the EPP lies in the trivialisation of the public discourse. Party families that focus on one or two foundations have an easier job of selling their ideas to the public. Also, more extreme and concentrated positions are more likely to go viral. Countering these issues should be dealt with in two ways—(1) stating that there is not one simple solution to everything and (2) acknowledging that reasonable differences should be

debated—thus exposing the different understanding of care and fairness among socialists, and that liberty is not a panacea to the liberals. The threat of populism should be addressed by exposing it—as offering few workable solutions—and by using clear and passionate language to defend positive values that are based on all six foundations, not their populist caricatures.

At the first meeting of the Mont Pelerin Society—in 1947, just after the Second World War—Hayek warned of an ‘intolerant and fierce rationalism which in particular is responsible for the gulf which particularly on the Continent has for several generations driven most religious people from the liberal movement and into truly reactionary camps in which they felt little at home’ (von Hayek 1967, 145). In other words, the ‘fierce rationalism’ of the left, of the progressive liberals, and the abandonment of the loyalty, authority and sanctity foundations by the centre-right has driven some voters towards populism. It is the responsibility of the EPP to bring them back—through the use of subsidiarity at European, national and subnational levels.

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European Citizens' Consultations: Consultation begins at home

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Abstract

In 2018 the European Citizens' Consultations took place throughout Europe. These events were organised by national governments and local actors, and thus represented a significantly increased role for the member states in communicating about Europe, a task which had previously been carried out chiefly by EU bodies. Thus, the Citizens' Consultations hold great potential for the application of the principle of subsidiarity to citizens' engagement and inclusion in decision-making. However, for the consultations to be successful, political leaders need to ensure that the results are reflected in the European Parliament election campaign and the agenda of the new leadership, demonstrating that citizens' voices are being heard in Brussels. This article will give background information about the European Citizens' Consultations, evaluate their potential and provide recommendations on how policymakers can ensure this new tool is used effectively.

Keywords

Democracy, Citizens, Consultation, Dialogue, European Parliament elections

Introduction

In his speech at the Sorbonne on 26 September 2017, French President Emmanuel Macron proposed 'citizens' conventions' to identify the public's 'priorities, concerns and ideas' for the future of the EU (Macron 2017). His proposal was implemented in 2018 under the name 'European Citizens' Consultations' (ECCs). The consultations were an experimental innovation that aimed to improve the quality of European democracy by providing citizens with an opportunity to express and exchange their views about the Union and its future. In doing so, the consultations essentially duplicated the existing

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Citizens' Dialogues and institutional consultation mechanisms, repackaging them as a democratic innovation, with the idea that citizens could have a direct impact on EU decision-making via the European Council.

This article argues that the significance of the ECCs is that they were conceived, designed and carried out at member-state level. It is true that there was an EU-level guiding process, including an online questionnaire hosted by the European Commission. But what set the ECCs apart from pre-existing formats such as the Citizens' Dialogues was their national- or local-level ownership. This meant that they had the crucial advantage of being perceived not as 'a Commission exercise' but rather as an EU-wide initiative driven by national governments and civil society actors. Thus, they represent the application of the principle of subsidiarity to the debate about democracy and the EU's future, and also serve to bring the member states and local politics into the discussion.

The result was that the ECCs and the Citizens' Dialogues formed a common front: in the former, local and national politicians discussed European issues, while in the latter, it was mostly EU representatives from Brussels who took part. The ambiguous relationship between the two initiatives somewhat obscured the supposedly innovative nature of the ECCs. Citizens were not always sure which institutions they were addressing at a given event: in some member states the Citizens' Dialogues were included in the branding of the ECCs, while in others the two were kept strictly separate. This ambiguity likely detracted from the ECCs' potential to demonstrate to citizens that their local authorities are also an appropriate channel for raising concerns about European issues.

However, the important thing is that the ECCs and increased numbers of Citizens' Dialogues represent an attempt to help citizens' involvement in European affairs reach a critical mass. For this to pay off, it is imperative that something tangible comes out of the discussions, with citizens' proposals shaping the agenda at the EU level. Formal results will depend on the next EU leadership. Nevertheless, the European Parliament (EP) elections represent an important opportunity for candidates to talk about the consultations, keep the results on the radar and demonstrate, even if only by referring to them in speeches, that the ECCs have been taken on board prior to the inauguration of the new politico-institutional cycle.

As awareness of the ECCs remains low, this article first provides details on how they were implemented. It then offers a cautious evaluation: the consultations should be welcomed for their contribution to the debate, but the magnitude of their success can only be measured by the extent to which their results are taken up by political figures. The article goes on to make recommendations about what policymakers should do, both in the EP election campaigns and afterwards, to show that the ECCs were more than merely a communication exercise and to reassure citizens that they have a voice in EU affairs.

How the democratic experiment played out

The prominent role played by President Macron in proposing the idea and the European Commission's efforts to provide an overarching framework could give the impression that the ECCs were a unified series of events fitting a single template. In fact, the hallmark of the initiative was diversity: in exchange for their agreement to participate, member states were granted a huge amount of flexibility to implement the events in whatever format best suited their own aims, resources and national practices. They made full use of this flexibility, which meant that the ECCs effectively took place in 26 separate campaigns, each with its own branding, formats, time frames and even goals (Butcher and Stratulat 2018).

Such a flexible process inevitably has certain downsides. With so much variation between national interpretations, the initiative had no common identity. This had consequences for its visibility, credibility and meaning, as well as for its prospects of having a lasting effect. Beyond the somewhat general aims set forth by Macron in his Sorbonne speech—identifying citizens' priorities, raising public awareness about the EU and getting citizens to debate European issues domestically—there was no predetermined objective for the ECCs. That means there are no clear criteria for measuring their success.

For example, the joint report that the Austrian and Romanian presidencies prepared for the European Council refers to a total of 1,700 events organised by member states (Council of the EU 2018b). According to the French Ministry of Foreign Affairs (*Quelle est votre Europe 2018a*, 4), nearly 1,100 of these took place in France, meaning that France alone accounts for a comfortable majority of the total events. This could be taken to mean that the other countries did not put in the same effort or have the same commitment, but to do so would be to misunderstand the principles behind their interpretations of the idea. The French 'model' allowed anything from conferences to participatory theatre performances to be labelled 'consultations' via an open application process. This was certainly an inspiration for some participating member states. But in others it was consciously rejected in favour of a smaller-scale vision. In the Netherlands, for example, the consultations took the form of just five meetings, where citizens hand-picked from a set of applicants discussed the EU's future not with politicians but among themselves.

Judging the European Citizens' Consultations on their own merits

The example just given demonstrates the difficulty inherent in trying to evaluate events with such diverse formats. Instead, the ECCs should be considered in the light of what they achieved given the very limited resources available. The idea was conceived, developed and implemented in the space of less than a year. Most member states agreed to participate in the initiative at the European Council summit on 23 February, and this left only a few months before events were launched in earnest shortly before

the summer period. National budgets had not been prepared with the ECCs in mind, meaning each government had to set aside money from existing budgets. Thus, funds were necessarily limited.

What is more, the ECCs took place at a time when Europe is facing deep divisions. New political forces, from the pro-EU liberal centrism of Macron's *En Marche!* to radical populist challengers—who are often opposed to further European integration and are increasing their support across the continent—are sources of concern for many incumbent governments. In this environment it was no mean feat to find the political will to embark on a process of consulting citizens and to risk giving voice to populist views. Yet the ECCs not only went ahead but actively involved all of the member states but one.¹ In practice, populist or anti-European voices did not feature prominently.

The ECCs should not be measured against some hypothetical model of what a perfect consultation should look like. Rather, in evaluating their impact, one has to take into account the situation before they took place. Whatever the weaknesses of individual event formats, it is undeniable that the ECCs brought discussions on Europe to a new level and succeeded in engaging citizens in each member state, albeit to varying extents. In many countries it was the first time that European issues had been discussed prominently by national actors, as opposed to those from the EU level.

This initiative was not intended to be a cure-all, but rather a first step, and an experimental one at that. Given the obstacles it had to overcome, it is an encouraging sign that it went ahead at all, and the important thing now is to ensure that the opportunity is not wasted. What happens next will determine whether the initiative can really be described as a success. While the ECCs represent an innovative application of subsidiarity to the question of engaging citizens, their success remains chiefly dependent on the response at EU level.

Analysing the key outcomes and mixed results

In most of the participating countries, the ECCs concluded in the autumn of 2018. Each country was required to submit a report summarising the discussions for consideration at the European Council on 13–14 December. Citizens participating in the consultations had been informed that their views would be discussed by the heads of state and government.

In the end, a joint report was published by the Austrian and Romanian presidencies (Council of the EU 2018b), accompanied by executive summaries from each participating member state (Council of the EU 2018a). The European Commission also produced an interim report on the results of the online questionnaire and a summary of the 2018 Citizens' Dialogues (Kantar Public 2018a; European Commission 2018a). Individual member states have also produced longer reports, many of which are available in English (European Commission 2018b). Several of these reports describe the substance of the

discussions in considerable detail. The French report, for example, runs to 170 pages (Quelle est votre Europe 2018b), while its German counterpart consists of a 32-page report and a 119-page scientific analysis of the full results (Germany, Federal Government 2018; Kantar Public 2018b).

However, the reference to these discussions in the Council conclusions suggests that the issue was discussed only marginally. The conclusions merely say that the consultations ‘could serve as an inspiration for further consultations and dialogues’ and that future priorities will be discussed at the Sibiu summit on 9 May 2019 (European Council 2018). This is inadequate, given that citizens had been led to expect that leaders would engage in detail with their discussions and propose concrete outcomes.

Having carried out a relatively high-profile initiative with the aim of bringing citizens closer to European decision-making, EU leaders must now ensure that those who participated feel that their contributions have been heard. If this does not happen, the perception that the EU is distant, unresponsive and undemocratic is likely to increase as citizens will feel that their contribution was meaningless.

The EP elections: the next test of citizens’ engagement with Europe

The campaigns for the EP elections in May 2019 are the next opportunity to demonstrate that the ECCs and their results are on EU politicians’ radar. The reports produced by each member state, the Council and the European Commission are excellent resources for politicians seeking to understand what is important to the public. These reports go far beyond the quantitative data supplied by opinion polls such as Eurobarometer, as they go into details about why citizens feel the way they do, the reasoning behind their views and what they want the EU to do in response. Candidates and *Spitzenkandidaten* running in the EP elections should pay attention to these reports and use them to help construct their own campaigns so that they address the European issues their constituents feel are most important.

This need not mean that candidates should surrender their autonomy or allow the content of their campaigns to be dictated by the consultation results. The topics most frequently mentioned in the reports are generally little different from those that one might expect: citizens are concerned about immigration, security and climate change. But if there is one thread that runs through all the national reports, it is the frustration of citizens who feel that the EU is not listening to them. The benefit of including explicit reference to the ECCs in candidates’ campaigns is that it would indicate that 2018’s most prominent ‘listening exercise’ has not already been forgotten and that politicians are aware of the concerns citizens have expressed. What is more, as populist and anti-European actors are likely to be serious challengers in this election, making reference to these detailed discussions with citizens would be a good way to counter their claim to speak for ‘the people’.

It has long been argued that European elections are not truly transnational contests, but ‘second-order national’ elections in which national parties campaign chiefly on national issues (Reif and Schmitt 1980). If candidates in 2019 wish to Europeanise the debate and turn the European elections into a real vote on EU issues, the ECCs and their results can tell them what is important to their local electorates and how they can best make the link between citizens’ day-to-day concerns and European policy. The results can also be used to demonstrate similarities between the priorities of citizens in different parts of Europe, which would help create the feeling that the election campaign is an EU-wide discussion. In this way, candidates can be the bridge between local-level discussions and decision-makers in Brussels by actively encouraging further discussion on European issues at a local or national level. At the same time, reference to the ECCs is an opportunity to emphasise how ‘local’ issues have a European dimension and vice versa.

The continuity of consultation after the 2019 European elections

Engagement with and reference to the results of the ECCs should not end with the EP elections. The Strategic Agenda 2019–2024, which will be discussed at the informal Council summit in Sibiu on 9 May, is supposed to take the ECCs on board. Members of the European Parliament and national politicians should follow the implementation of this agenda closely and hold the new Commission to account to ensure that both the consultation topics and specific proposals made by the citizens are given due consideration. As in the election campaigns, the link between policy proposals and discussions during the ECCs should be made explicit to ensure that citizens in general are aware that these events took place and are having a tangible impact on the development of European policy.

Referring to the ECCs prominently in the new politico-institutional cycle should serve to raise awareness about them, among both the public and political leaders. This will in turn make it all the more crucial that the consultations do not remain a one-off exercise but are repeated to give citizens further opportunities to influence decision-making.

The presidents of the Committee of the Regions and the European Economic and Social Committee have raised a proposal for an EU ‘permanent mechanism’ for consulting citizens (Lambertz and Jahier 2018). Political leaders in the member states should throw their weight behind this plan and push for a repetition of a consultation process that puts national governments, local authorities and civil society actors in the driving seat. They should also undertake to maintain proactive communication with citizens on European issues to ensure that discussion on these topics continues to take place at the national and local levels.

Conclusion: looking ahead to new engagement

The ECCs are still a new tool, especially for those member states that do not have a strong tradition of actively engaging with citizens. However, this new experience was generally well received by both civil society and national governments. This shows that

local actors are indeed interested in this kind of event, but the Commission's Citizens' Dialogues were not an appropriate means to involve them. It took an initiative that was driven by the member states and had local ownership to bring them on board.

The ECCs need not replace or be merged with Citizens' Dialogues, but the relationship between them should be better clarified and kept consistent across Europe. The ECCs are valuable as a new tool for consulting and engaging with citizens on EU-wide subjects at the local and national levels. They help ensure that local and national political figures are involved in EU-level issues and that these issues do not remain the exclusive remit of 'Brussels bureaucrats'. This makes the ECCs the most promising example of the application of the principle of subsidiarity to citizens' engagement and involvement in decision-making.

Brussels officials, for their part, need to show that they are aware of these consultation processes and to reassure citizens that their input has been heard and taken on board. They can make a start by referring to the results in speeches and campaign material, and it is vital that this forms part of the EP election campaign.

In the future the ECCs should take place regularly to collect citizens' input on an ongoing basis. As suggested by the presidents of the European Committee of the Regions and the Economic and Social Committee, a consultation mechanism based on the ECCs could run on an annual cycle. Consultations could begin when the European Commission's work programme is announced and then run throughout the first half of the year, resulting in reports being submitted to the Council, Parliament and Commission in time for the State of the Union speech. In this way they would serve as tools for both communication and feedback, while also bringing the citizens closer to the policymaking process.

In light of the rising populist and anti-EU sentiment, member states should find new ways to allow citizens to provide input into the policymaking process. New tools such as the ECCs could help complement representative democracy, not with the blunt and unannounced tools of direct democracy, such as referendums, but with deliberative democracy, giving citizens the chance to express themselves and influence decision-makers in a consensus-oriented manner. With the ECCs, consultation begins at home, driven by the member states and local civil society in such a way that the participating citizens can feel the local relevance of European issues. They must now see that the supposedly distant EU-level politicians have heard them and intend to act.

Note

1. Only in Italy did political factors, notably the crisis resulting from the March 2018 general election, prevent the ECCs from taking place. The UK decided not to participate due to its forthcoming departure from the EU.

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The Eastern Partnership: Geopolitics and policy inertia

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Abstract

On the eve of its tenth anniversary, the EU's Eastern Partnership seems to be drifting towards placing greater emphasis on differentiation and stabilisation than on reforms. This contrasts with the transformative ambitions displayed by the EU when it launched this new initiative in 2009. These ambitions have produced mixed results and were partly abandoned in the 2015 European Neighbourhood Policy Review. Since then, policy inertia seems to have prevailed. This exposes the EU to the risk that its relations with its eastern partners will become increasingly geopoliticised. This might lead the EU to lower its transformative ambitions even further. And this, in turn, could throw into question a fundamental aspect of its foreign policy identity, the EU's role as a transformative power. In other words, such a development might not only weaken the EU's role in its eastern neighbourhood but also undermine the added value of its foreign policy.

Keywords

Eastern Partnership, Geopolitics, Neighbourhood, Transformative power, Russia

Introduction

Interest in the Eastern Partnership (EaP) was rekindled during the 2013–14 Ukrainian crisis but waned quickly thereafter. It is not much in evidence today despite the upcoming tenth anniversary of the EaP. There is a risk that the EU will slip into a comfortable policy inertia with regard to its relations with its eastern partners. This might lead to the increasing geopoliticisation of these relations at the expense of the EU's transformative ambitions.

The EaP was launched in November 2009 as an extension of the European Neighbourhood Policy (ENP). It was meant to bring about the closest possible economic

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and political relations between the EU and its eastern neighbours that could be achieved short of membership. The rising tensions with Russia and the ongoing crisis in Ukraine are testing its limits and putting the EU in the position of having to choose between values and interests (Youngs 2017, 212–37).

These points will now be developed. The first part of the article offers a brief overview of the origins of the EaP. Part 2 looks at the EaP from the perspective of the EU as a transformative power. Part 3 deals with the question of the growing geopoliticisation of the EaP. The fourth and final part discusses developments since the ENP Review in 2015, including the agreement on the 20 deliverables for 2020.

From ‘Eastern dimension’ to ‘Eastern Partnership’

The need for the EU to design a specific approach to its eastern neighbours was first expressed in the discussions leading to the adoption of the ENP in March 2004. The idea arose from a convergence of concerns about the effect of EU enlargement on countries such as Belarus, Moldova, Russia¹ and Ukraine. Later in the same year, the Polish government submitted to the member states a non-paper calling for an ‘Eastern dimension’: a new and specific EU approach to these same countries, but extended to include the countries of the South Caucasus. Also included in the non-paper was the possibility of EU membership for Ukraine. These initiatives, however, were met with concerns by certain member states—France and Spain in particular—which asked that the countries along the southern shore of the Mediterranean should be included in the new policy as well (Schäffer and Tolksdorf 2009).

As a result, the member states opted for a new approach aimed at all the EU’s southern and eastern neighbours under the name ‘the European Neighbourhood Policy’. More specifically, the ENP was based on the conclusion of action plans that were negotiated on a bilateral basis and that led to the signing of Partnership and Cooperation Agreements with the EU’s neighbours. These action plans included the proposals that the countries involved should have a stake in the single market and would cooperate with the EU in new fields such as energy, environment, justice and home affairs, and security. In May 2008 the ‘Eastern dimension’ resurfaced in a proposal made to the Council by the Swedish and Polish governments for an ‘Eastern Partnership’ to be developed by the EU with its Eastern European neighbours (Poland, Ministry of Foreign Affairs 2008). The EaP was officially launched in Prague in November 2009. It included Belarus, Moldova and Ukraine as well as the three South Caucasus republics of Armenia, Azerbaijan and Georgia. While being somewhat ambiguous as to EU membership, the EaP aimed at developing a new relationship with these countries that went beyond the relationship that existed within the framework of the ENP. More concretely, it offered the EU’s eastern partners the possibility of entering into Deep and Comprehensive Free Trade Agreements (DCFTAs) with a view to establishing a Neighbourhood Economic Area. Included in these agreements are approximation with EU legislation in the economic field and visa liberalisation for their nationals.² The EaP also focuses on creating new areas of multilateral cooperation in fields such as good governance and democracy, economic

convergence with EU legislation, energy security, foreign policy and defence (European Commission 2008).

The limits of the EU's transformative power

Since its inception the EaP has reflected the EU's ambition to be a transformative power (Borzel and Risse 2009). Mark Leonard describes the idea of Europe as a transformative power as follows: 'Europe's obsession with legal frameworks means that it transforms the countries it comes into contact with, instead of just skimming the surface. . . . Europe doesn't change countries by threatening to invade them: its biggest threat is to cut off contact with them' (Leonard 2015, 2). This was openly claimed by the former EU Commissioner Štefan Füle, who once explained the EU's overall objective for its eastern neighbours as follows: 'It is about finishing the transformation of the European continent' (Dempsey 2013, 1).

The EaP is aimed at guiding the reform process in the eastern partners in order to align them with EU values and norms, such as the commitment to the rule of law, good governance and the approximation of their domestic legislation to the single market *acquis* (European Commission 2008). In this, the EaP reflects the role that the EU has assigned for itself—that of being a transformative power. In playing this role, the EU relies essentially on financial assistance, partnership, the expansion of the field of applicability of its norms to include partner countries and a reluctance to use military force.

The EU's transformative ambitions are deeply embedded in the experience of its enlargements into Central and Eastern Europe in 2004 and 2007. The debt that the ENP owes to the EU enlargement policy is particularly evident (Kelley 2006). The ENP's use of terms and concepts such as 'conditionalities', its approximation of domestic legislation and its use of benchmarks are all reminiscent of the EU's enlargement policy. Moreover, in 2015 the decision was taken to put one EU Commission Directorate-General in charge of both policies.

That said, the two policies have tended to grow further and further apart. On the legal side, one can point to the inclusion (by means of the 2007 Lisbon Treaty) of Article 8 in the Treaty on European Union. This article mentions the need to develop a special relationship with the neighbouring countries. It poses the risk that the eastern partners will become locked into a permanent non-member status. In November 2017 the EaP–EU Summit declaration restricted the eastern partners' EU aspirations to what had already been provided for in the existing agreements (Kostanyan 2017).

To assess how successful the EU's transformative efforts have been, one has to consider its record in promoting democracy, human rights and legal approximation. While promoting democracy was included in the objectives of the ENP and then emphasised still further for the EaP, only 30% of the ENP funding has been committed to this goal (Shapovalova and Youngs 2012, 3). The human rights situation in the eastern partners has shown little sign of improvement, with the possible exception of Moldova and

Georgia. In Ukraine the situation in the Russian-occupied territories (the Donetsk and Luhansk regions) and in Crimea should not divert attention from what is transpiring in the rest of the country, where concerns remain about political rights, civil liberties, LGBTI rights, corruption, freedom of the media and the excessive state monitoring of NGOs (Rácz et al. 2018, 10–13). Even the legal approximation to the single market *acquis* required by the DCFTAs has proved more challenging than expected for the countries concerned due to the lack of funding needed to mitigate its costs (Delcour and Wolczuk 2013, 14).

In conclusion, the EU's efforts to transform the eastern partners have thus far produced mixed results. This does not mean that the EU's ambitions should be abandoned altogether. Indeed, these relate to the more fundamental discussion on the distinctiveness and added value of a foreign policy central to which is the idea of the EU as a transformative power. In this respect, both the EU's ENP Review and the Global Strategy (from 2016) are indicative of a shift in emphasis as far as the EU's approaches to its neighbours are concerned. It is a move away from promoting democracy to more specific objectives, based on the new concept of 'resilience', which sees security as a precondition for prosperity and democracy (Pishchikova and Piras 2017, 114–15).

The EaP and geopoliticisation

The Russia–Ukraine crisis broke out in March 2014, following in the wake of the Euromaidan protests of the previous autumn. This crisis led observers and analysts to stress that the EU had adopted a more geopolitical approach to its relations with the eastern partners (Makarychev and Devyatkov 2014; Nitiou 2016). The net effect, they argued, was a growing geopoliticisation of the EaP.³ Such views should be assessed with caution for the following two reasons: (1) they create the misleading impression that the EaP had previously been devoid of a geopolitical dimension; and (2) they tend to misread Russia's policy towards the countries in the Partnership.

Concerning the first reason, there is no doubt that the EaP did have a geopolitical dimension from the start. The positions of various member states make this clear. For example, Poland and the Baltic States saw the EaP as constituting a buffer zone between them and Russia. Other member states, including France and Germany, viewed it as a possible bridge with Russia. It is worth keeping in mind that the 2008 conflict in Georgia was not mentioned in the Swedish–Polish memorandum, which focused its attention instead on Ukraine. Nevertheless, this conflict contributed to accelerating the discussions for the adoption of the EaP by the member states. The Ukrainian crisis and the subsequent annexation of Crimea had the effect of bringing these two views closer together. This can be seen in the statement released in April 2014 by the foreign affairs ministers of the Weimar triangle countries (France, Germany and Poland), which called for a reform of the ENP (Germany, Federal Foreign Office 2014).

The second reason why caution is needed when assessing the geopoliticisation of the EaP is linked to how Russian policy on the shared neighbourhood is to be understood.

Observers have been keen to emphasise the new geopolitical turn in Russian policy, but this should not be exaggerated. The Eurasian Economic Union failed to attract the EU's eastern partners, with the exception of Armenia (and here the results have been rather negative) (Ter-Matevosyan et al. 2017). Concerning Ukraine, there seems to be little chance that the plans of Russian President Vladimir Putin include the annexation of the Donbas and Luhansk regions. This is because doing this might set a precedent for Russia's own regions with the risk of undermining the country's federal structure. Finally, the unilateral annexation of Crimea and Sebastopol was anything but a geopolitical victory for Russia. Since the Euromaidan protests it has been the Kremlin's objective to draw Ukraine away from Western influence. But Russia's actions have instead contributed to pushing the country even further away from its own sphere of influence (Wood 2018, 120–38).

The ENP Review and the 20 deliverables

The response to the changes to be made to the ENP led to the ENP Review, whose results were announced on 18 November 2015 in a joint communication by EU High Representative Mogherini and EU Commissioner Hahn. The ENP Review reflects the EU's inclination to move in the direction of a *realpolitik* strategy by abandoning its one-size-fits-all approach based on its own values (Blockmans 2015). This change is mirrored in the new terminology that the EU has been using in reference to its neighbours. The terminology stresses stabilisation and differentiation over democratic reforms (Cianciara 2017). The ENP Review also abandons the enlargement methodology, focusing instead on the benefits DCFTAs afford to its eastern partners. In the areas of conflict prevention and counterterrorism, it puts new emphasis on the Common Foreign and Security Policy and the Common Security and Defence Policy. These new developments have generally been welcomed, but they fell short of a fundamental reorientation of the ENP (Furness and Schafer 2015)

Since the ENP Review, the EaP has lost some of its visibility on the EU's external policy agenda. As a result it has drifted towards placing greater emphasis on stabilisation and differentiation. The former is reflected in the partial lifting of sanctions against Belarus and the invitation of its leader Alexander Lukashenko to the EaP summit in November 2017 despite complaints from the leaders of the country's opposition (Bosse & Vieira 2018, 25).⁴ The new emphasis on differentiation can be seen in the signing of the Comprehensive and Enhanced Partnership Agreement with Armenia. This agreement is much more modest in scope than the initially planned DCFTA as the latter proved to be incompatible with the country's decision to join the Russian-led Eurasian Customs Union. Another example of a less ambitious agreement is the new special agreement being negotiated with Azerbaijan amid criticisms related to the human rights situation in that country (European Parliament 2018).

At the EaP summit in November 2017, the EU and its eastern partners agreed 20 deliverables to be achieved by 2020. These deliverables revolve around three main priorities: economic development, good governance and connectivity, and energy efficiency

and climate change. There are also three more general deliverables related to civil society, gender equality and non-discrimination, and strategic communication and independence of the media. A meeting between the EU28 and the six EaP foreign affairs ministers held in Luxembourg on 15 October 2018 provided an opportunity to take stock of the modest progress made in this respect (Council of the European Union 2018).

Conclusion

By emphasising the importance of ownership in all fields of cooperation and the need for greater monitoring, the EU is adopting a more pragmatic view on the EaP. While this might be the only way forward in the short term, there is a risk that it will perpetuate policy inertia in the long term. And since policy inertia sets stability above reforms, this might contribute to lowering the EU's ambitions even further. In short, it might lead to a growing geopoliticisation of the EU's relations with its eastern partners that could throw into question the EU's goal of being a transformative power—which is currently a fundamental part of its foreign policy identity. Such a development would not only undermine the added value of EU foreign policy but also weaken its position towards its eastern partners. In this context, the EaP's tenth anniversary should be used as an opportunity to reassert the EU's transformative ambitions in its eastern neighbourhood.

Notes

1. Russia quickly refused to be included in this policy and sought a special bilateral relationship with the EU.
2. To date, Georgia, Moldova and Ukraine have concluded DCFTAs with the EU.
3. In this article, 'geopoliticisation' is understood as 'the discursive construction of an issue or policy as a geopolitical matter' (Cadier 2018, 3).
4. In the end, Belarus sent only its foreign affairs ministers to the summit.

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Strengthening the founding values of the EU: The potential role of the Fundamental Rights Agency

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Abstract

The rule of law is one of the founding values of the EU, as indicated in Article 2 TEU. This provision recognises that the rule of law is a core value, inherent to liberal democracy, and one which characterised the Union and its member states long before the formal establishment of the EU by the Maastricht Treaty. However, several member states, most notably Poland and Hungary, seem to have placed this value in jeopardy, leading EU institutions to disagree on how to combat this problem and its political consequences. The aim of this article is to propose a solution that involves a rather neglected, yet certainly competent actor, the Fundamental Rights Agency. The outcome would be twofold: on the one hand, the rule of law would be vitally strengthened; on the other, the role of the Agency would be fortified in line with its scope.

Keywords

EU values, Rule of law, Article 7 TEU, Sanctioning mechanism, Fundamental Rights Agency

Introduction

The concept of the rule of law has been rigorously discussed throughout the centuries by prominent political philosophers, such as Aristotle, Locke, Montesquieu and Dicey. Aristotle provided the basic definition, which indicates that the law should govern rather than any individual citizen. Enlightenment thinkers underlined several parameters of the concept: the importance of the law being promulgated and known to people, and the connection between the rule of law and an independent judiciary. Along the same lines, Dicey argued that everyone should be equal before the law, that no one should be

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punished by the state except where there has been a clear breach of the law and that the judiciary should be able to uphold the rights of individuals against the power of the state (Waldron 2016). From that perspective, the rule of law is an essential element for the proper functioning of a liberal democracy. Hence, the EU, as an autonomous legal order, acknowledges the rule of law as one of its founding values.

One of the main problems to which the EU has to find answers concerns instances of backsliding on the rule of law. Indeed, the tension created by the jeopardy in which the rule of law has been placed in Hungary and Poland has revealed institutional disparities within the Union. As Kochenov and Bard aptly observe: ‘All that is being done by the institutions appears to reveal one and only one point: there is a total disagreement among all the actors involved as to how to sort out the current impasse’ (2018, 4).

An outcome of this rule of law crisis is the new rule of law framework, which allows the European Commission to address systemic threats in EU member states following a three-stage process. In brief, first, through an examination of the relevant information, the Commission assesses whether there are clear indications of a systemic threat to the rule of law and sends a ‘rule of law opinion’, initiating a dialogue with the member state concerned. On the basis of the results of that dialogue, if the Commission finds that there is objective evidence of a systemic threat, it addresses a ‘rule of law recommendation’ to the member state, clearly indicating the reasons for its concerns and recommending the resolution of the problem by the member state’s authorities within a fixed time limit. In the final stage, the Commission monitors the action taken by the member state with regard to the recommendation, assessing the possibility of activating one of the Article 7 TEU mechanisms should the results not be satisfactory (European Commission 2014, 7–9). This quasi-legal, new, soft law tool has limited binding effect and complements the traditional sanctioning mechanism included in Article 7 TEU, which is perceived as a solution of last resort.

However, this lack of immediate action traumatises the EU both internally and externally. Internally, another fundamental principle, mutual trust between the member states, is undermined. As the European Court of Justice (2018) has emphatically stated,

EU law is based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the European Union is founded, as stated in article 2 TEU. That premiss implies and justifies the existence of mutual trust between the Member States that those values will be recognised, and therefore that the EU law that implements them will be respected.

From the perspective of those outside the Union, the EU loses its credibility as a promoter of democracy, the rule of law and human rights, the principles also required for accession in accordance with the Copenhagen criteria.

The aim of this article is to propose a solution that involves a quite neglected, yet certainly competent actor, the Fundamental Rights Agency (FRA). The FRA was established in 2007 under Council Regulation 168/2007; as an EU agency it is legally independent of

EU institutions and was set up to perform certain tasks under EU law. Its activities are organised into three main areas: data collection, research and analysis; providing advice to policymakers, and cooperating and networking with stakeholders; and communicating the results of its work and raising awareness of fundamental rights (FRA 2018a, 3). Nevertheless, the Agency's verdicts have not been taken seriously in the formulation of EU human rights policy, as explained below. Understanding the Union's founding values as a cohesive whole, the outcome of this proposal will be twofold: on the one hand the Union's founding values will be vitally strengthened; on the other hand, the role of the Agency will be fortified in line with its scope.

A bloc of values

A provision on founding values was first included in Article F of the Maastricht Treaty. This was enriched and clarified with the Amsterdam amendment, with the addition of more values and a direct reference to the Union as the subject. Finally, the amended TEU under the Lisbon Treaty enacted a separate provision on the founding values of the Union, one that had first been introduced in the unsuccessful Treaty Establishing a Constitution for Europe (Dorsemont 2012, 46–7). Article 2 TEU reads: 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail'.

Apart from its highly symbolic value, which reflects the common identity of the member states both independently and as components of the Union, Article 2 TEU imposes legal obligations that both the member states and the EU are bound by, in the sense that any respective violation will have legal consequences, for example, under Article 7 TEU. This being the case, it has been argued that Article 2 TEU is comprised of principles and legal norms, rather than values, which mostly have an ethical dimension (von Bogdandy 2009, 22; Kochenov 2014, 148).

Since this terminological question, although very important, is not the main concern of this article, both terms will be used with reference to Article 2 TEU. What must be underlined is the unity of the values reflected in Article 2 TEU, in the sense of their inherent interrelation in a modern, democratic regime. This approach is manifestly illustrated by the British jurist, Lord Bingham, in his work on the rule of law. The author favours a 'thick' definition of the rule of law, embracing the protection of human rights within its scope, over a 'thin' approach which favours a distinction between human rights protection and the rule of law (Bingham 2011). Hence, when part of the population within a legal order is systematically oppressed, in the sense of being deprived of human rights, that legal order cannot be observing the rule of law; the 'fundamental compact' that underpins the very concept of the rule of law between the governed and the governors, whereby both 'sacrifice a measure of freedom and power' for the benefit of all, is infringed otherwise (Parpworth 2018, 35).

Unlike other philosophical approaches to the rule of law which could be applicable in totalitarian regimes (Raz 2009, 211), the formulation of Article 2 TEU in the EU legal order affirms Lord Bingham's perspective. From a textual analysis of the provision, it can be easily observed that the Union understands respect for human rights, democracy and the rule of law in combination as founding values. Furthermore, seen in the general context of the Union's nature, those values are highly interrelated. Indeed, no one could possibly argue that the rule of law is being conformed with in cases of massive human rights violations, nor could anyone suggest that the rule of law is functioning in a non-democratic legal order. In that sense, rule of law crises often reflect human rights infringements, whereas a systemic instance of backsliding on human rights is simultaneously considered a problem in terms of the functioning of the rule of law. This perception is further confirmed in the treaty provisions governing the Union's actions on the international scene, which seek to promote democracy, the rule of law and human rights (art. 21 TEU).

Sanctioning mechanism

Included at an early stage in the Treaty of Amsterdam, as part of the negative integration policy (Alston and Weiler 1998, 665), Article 7 TEU contains a preventative mechanism and a sanctioning mechanism in paragraphs 1 and 2 respectively. The sanctioning mechanism is a two-step procedure: first, a proposal is submitted to the European Council by either one-third of the member states or by the Commission; the European Council must then unanimously agree that there has been a serious and persistent breach by a member state of the values referred to in Article 2 TEU. The consent of the European Parliament is needed. The penalty on the basis of the above-mentioned determination is imposed in the second stage, by the Council acting by a qualified majority, with the ability to suspend certain rights derived from the application of the treaties, including voting rights in the Council.

A major issue is the definition of the terms 'serious' and 'persistent' in order to understand when the sanctioning mechanism can potentially apply. According to the Commission, for a breach to be considered serious for the purpose of Article 7 TEU, a variety of criteria have to be taken into account, including the purpose and the result of the breach (2003, 8). The purpose criterion implies policies introduced at a member state level that negatively affect specific, vulnerable social classes, for example immigrants or minority groups. The result of such an effect is the breach of one of the values given in Article 2 TEU.

Regarding persistence, the breach should go far beyond the limits of a typical human rights violation or an ordinary EU law violation and acquire a systemic character. The formality used for the breach is irrelevant: it could either be forced via a piece of legislation or merely be an administrative or political practice of the authorities of the member state. If a member state has repeatedly been condemned for the same type of breach over a period of time and has not demonstrated any intention to take practical remedial action this should be taken into account (European Commission 2003, 8).

Although the sanction mechanism is a potentially efficient procedure in promoting the Union's founding principles, its application in practice has been conducted reluctantly (Hillion 2016, 4–5; Kochenov 2017, 2), mainly for two reasons. First, since there is no common understanding of the principles in Article 2 TEU (Council 2013, 5), an effective response through a formal procedure could end up being rather nebulous, and hence risky, in terms of legal certainty. However, the most important reason is related to the consequences for the 'guilty' member state. The penalties imposed are of a political nature, with the most severe being the deprivation of voting rights in the Council. This would cause the political isolation of the member state within the institutions of the Union, which may create tensions and, ultimately, be counterproductive.

The Fundamental Rights Agency

The Fundamental Rights Agency was established in 2007 as the successor to the European Monitoring Centre on Racism and Xenophobia, under Council Regulation 168/2007. The agency is composed of experts in the field of fundamental rights representing the member states, the EU and the Council of Europe. Its main objective, as outlined in Article 2 of the Regulation, is to provide the relevant institutions, bodies, offices and agencies of the Community (now Union), as well as its member states, with assistance and expertise relating to fundamental rights when implementing Community law. It is there to support these actors to fully respect fundamental rights when they take measures or formulate courses of action within their respective spheres of competence, and does so through the publication of relevant reports in accordance with Article 4 of the Regulation. As emphatically presented on the Agency's website, it seeks to instil a fundamental rights culture across the EU. It does this by

- collecting pertinent and timely data and information,
- sharing evidence-based insights and advice with policy- and decision-makers,
- raising rights awareness and promoting fundamental rights through cutting-edge communications, and
- engaging with a wide array of diverse stakeholders from the local to the international level with the targeted assistance and in-depth knowledge that is the hallmark of Europe's centre of fundamental rights expertise.

The typology of agencies varies depending on the criteria used (Chiti 2013, 94–100; van Ooik 2005, 139–45; Geradin 2004, 19–27). Based on its above-mentioned objectives and tasks, the FRA should be considered an information agency, responsible for the production and dissemination of high-quality information in the field of human rights.

The Agency's fields of work are further specified in a five-year multi-annual framework determined at Council level. The Agency's thematic focus for 2018–22 is set forth in Council Decision 2017/2269:

The thematic areas shall be the following:

- a) victims of crime and access to justice;
- b) equality and discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation, or on the grounds of nationality;²⁴
- c) information society and, in particular, respect for private life and protection of personal data;
- d) judicial cooperation, except in criminal matters;
- e) migration, borders, asylum and integration of refugees and migrants;
- f) racism, xenophobia and related intolerance;
- g) rights of the child;
- h) integration and social inclusion of Roma. (Council of the European Union 2017, 3)

The findings of the Agency, especially in the last thematic area, demonstrate significant human rights deficiencies regarding fields of public policy in certain member states. As indicated, the socio-economic situation of the Roma in the four key areas of employment, education, housing and health is not satisfactory and is worse, on average, than the situation of non-Roma living in close proximity; in addition, Roma continue to experience discrimination (FRA 2012). Unfortunately, these findings are further confirmed in the Agency's more specialised reports (FRA 2016a, FRA 2016b) and the latest annual fundamental rights report (FRA 2018b, 99–122).

The possibility of a serious and persistent breach of the Union's values could at least be considered on the basis of the Agency's above-mentioned reports. Public policies in certain member states negatively affect a vulnerable social class, the Roma, whose quality of life is much lower compared to that of their non-Roma neighbours, thus creating a systemic problem, far beyond typical human rights violations.

The author supports a more active role for the FRA within the Article 7 TEU scheme. In the above-mentioned example, no further action has been taken on the basis of the Agency's continued findings. The predominance of intergovernmentalism in the Article 7 TEU procedure, which demands a political consensus, has led to a static situation. In that sense, the Agency's efforts to pursue a more dynamic and cohesive protection of fundamental rights within the Union has so far been in vain.

So what role for the FRA? Repeated reports by the Agency could alert the only politically supranational institution involved in the Article 7 TEU process, the Commission, to propose the initiation of the sanctioning mechanism. The Commission would not be bound by the Agency's findings, but would inform the Agency of its reasons if no proposal was brought. This form of collaboration among institutions is not new to the EU legal order. According to Articles 225 and 241 of the Treaty on the Functioning of the European Union the Commission is not bound to act on proposals within its competences, however, in case of refusal, the Commission must inform the relevant actor accordingly.

Putting this spirit of collaboration into context, the role of the FRA should be modified with regard to the interrelation of its reports with Article 7 TEU. From a technical perspective, this would demand amendment of, most notably, Articles 2, 4 and 7 of Council Regulation 168/2007, regarding the objectives, tasks and relations with relevant Union institutions respectively. This implies the alteration of the nature of the Agency from a purely informational one to a quasi-instrumental one that has a more active involvement in the procedures leading to the adoption of binding rules (Chiti 2013, 96).

Conclusion

The ongoing rule of law crisis has put the values of the Union into context. The EU must clarify that Article 2 TEU does not simply contain a political manifesto and that it may require difficult decisions to be taken at EU level. In this framework, the FRA can play a significant role: as an independent agency composed of experts in the area of fundamental rights, it enjoys the credibility needed for such a task. As proposed, the reports of the Agency would not be binding on the Commission, but would provide advisory assistance for further proceedings. Hence, the nature of the FRA would be altered. What is now a purely informational agency would become a quasi-instrumental agency in the sense that it would promote integration through a clear and harmonised level of protection of fundamental rights in the EU and its member states.

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Deepening the single market and enhancing EU democracy: A justification for ‘more Europe’

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**Theodore Pelagidis
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Abstract

The need for ‘more Europe’ stands out today in an international environment that is contaminated by populism, authoritarianism and demagoguery. Consequently, when confronting political radicalism, the domains that the EU should henceforth concentrate on in a positive way must be specified, explaining practically and with pragmatism the reasons for ‘more Europe’. In particular, the EU must deliver concrete benefits that citizens can see in their daily lives, but, at the same time, it has to give them more democratic control over their representation in EU bodies and in the way EU law is shaped and implemented. To accept such progress, the EU must first recognise the critical flaws in its current economic and political architecture, before proceeding to adopt policies that will adequately restore the dynamism of the European dream, leading to a more efficient and just EU. More democracy will help gather support, and ensure renewed progress towards a closer Union in which the single market is meaningfully deepened.

Keywords

Institutions, European unification, Convergence, Europe, Radicalism, Populism

Introduction

European unification is currently facing challenges that seriously threaten its future prospects. The Union’s political and economic success is increasingly being questioned, not only by leaders but also by large numbers of European citizens. Political discontent usually

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follows economic stagnation, and while parts of Europe are still enjoying prosperity, enthusiasm for a 'United Europe' seems to have waned, with the elderly, especially, longing for a restoration of sovereignty (Raines et al. 2017, 29). The inability of Europe to promise growth and increasing prosperity for all is directly linked with the slowdown in the deepening of the single market, as the first politically easier victories of the project have largely exhausted their immediate potential to enhance the prospects of Europe. However, at a time of increasing Euroscepticism, it appears to be difficult to muster the popular support needed to advance the deepening of the Union in ways that will offer the needed growth. This deadlock has led to uncertainty, which is further undermining the growth prospects of the Union and, consequently, of its member states.

Europe jumped unprepared into the single currency, following the 'Monnet doctrine', which assumed that challenges would be dealt with along the way. In its preamble, the 1957 Treaty of Rome expressed a determination to 'lay the foundations of an ever closer union among the People of Europe', a notion repeated in all subsequent treaties, along with the commitment to respect the core values of Europe. This approach reflected a realistic way to launch a process that at the time primarily aimed to place post-Second World War, democratic Europe on a path to closer political and economic relations. It also aimed to put Europe on a path of reconciliation, while taking into account that should the path take Europe towards Spinelli's federation, the process would surely be long and unpredictable. While praise for Europe during its early days of success certainly helped, it facilitated the postponement of a frank discussion on how the Union should evolve, thus setting the stage for many of the challenges the EU faces today. The 'closer Union' advanced for many years along these lines and did not threaten the domestic equilibria of power within the member states. The way European integration progressed allowed those who, rationally from their point of view, oppose 'closer Union' to boycott and slow down the idea at every step.

Even today, discussion of a viable path for Europe focuses on choices that will determine if a connected car can drive across Europe or a drone can be operated by multiple countries, as envisaged in the recent White Paper (European Commission 2017, 17, 19, 21) that follows up on the 2015 *Five Presidents' Report* (European Commission 2015). Such stasis allows European leaders once again to avoid the tough question of what 'more Europe' should mean. Indeed, is 'more Europe' defined by Eurobonds and a minimum guaranteed income or unemployment benefit? Would such security offer an answer that will satisfy our trembling hand as we choose between the 'transfer Union'—a more federal Europe with solidarity—and the 'vengeance Union', in which those member states that cannot meet certain high standards are excluded from the culminating steps of 'closer Union', or are threatened with fines, draconian policy programmes or even expulsion, be it full or partial.

This article argues that 'more Europe', in the end, has to include at its core the smooth convergence of national regulations and administrative practices towards a common standard. Today this convergence is still uneven in terms of basic dimensions that do not infringe on the principle of subsidiarity. This is preventing the single market from living

up to the potential it has to improve the lives of the citizens of Europe. Furthermore, it is limiting opportunities for growth and depriving businesses in many member states of the opportunity to compete on equal terms with those of other member states that offer a better business environment. We argue that ensuring such convergence is necessary to secure the growth that will once again demonstrate that a common European future is a guarantee not only of peace and stability, but also of prosperity. So, if Europe wants a future, it is high time we seriously discussed what Europe is, what it should be and the exact meaning of more or less Europe.

Political uncertainty and economic underperformance

This much-needed discussion should begin to take place despite the seriously unfavourable political and economic environment. Europe's political uncertainty is getting worse, and the reasons for worry have multiplied with Brexit. Spain is probably heading towards new elections as the minority socialist government is unstable, while the Greek economy is trapped in an unfortunate insufficient reforms—mediocre growth—lack of demand equilibrium. German Chancellor Angela Merkel is expected to step down in the coming years, and Italy's political radicalisation and clash with the EU may further destabilise the 'too big to fail' Italian economy. And this is without mentioning French President Emmanuel Macron's serious problems with the *Gilets Jaunes*. Dangerous waters are not, of course, restricted to the political arena. Over the past decade, EU member states have continuously underperformed economically despite some glimpses of recovery. This has created chronic problems such as high unemployment and rising inequality (OECD 2017, 6). Economic stagnation, in turn, has spurred discontent about Europe among citizens, propelling voters to political extremes, and leaving member-state societies hugely divided and polarised.

As a consequence, capital expenditures have slowed over the past several years, as there is little incentive to invest in a continent that is facing so much uncertainty. To make matters worse, structural divergences among member states, as well as institutional weaknesses, have further eroded voters' belief in the European project. In a nutshell, the institutional structural weaknesses of Europe in general, and the euro area in particular, are not just limited to the fact that a satisfactory level of supranational coordination of national structural and fiscal policies has not been achieved. There are also other pervasive shortcomings that continue to deprive the common currency area of a market with a level playing field in which government interventions are uniform and bureaucratic, and administrative barriers and costs are kept under control.

This structural weakness of Europe relates directly to a failure to handle, in a practical way, the diversity of institutional maturities and capacities among member states. The importance of the relationship between institutions and economic performance is well documented, including in research by political economists Mancur Olson (1982), Douglas North (1990) and, more recently, Daron Acemoglu and James Robinson (2015). The literature offers plenty of insight into how national political equilibria are formed by the political system of each country, and into who the national players are

that benefit from such inherent structural weaknesses, which are reinforced due to the dominance of national decisions regarding structural and fiscal policy. Within the EU, these concerns are not only relevant when weaknesses imply the reduced ability of a country to govern itself well. Rather, the disparities in institutional quality among the member states mean that policy coordination cannot work beyond a certain point, and this concerns all dimensions of policy (fiscal, monetary and economic), as eloquently stressed by Mario Draghi (2014) in his University of Helsinki speech. In turn, this eventually exposes the limits of the current European structure, which has the mission, in principle, of resolving disputes between member states and supranational entities (Mitsopoulos and Pelagidis 2017, 69–88).

The inability of Europe to enforce EU law across all member states in a uniform and efficient way is closely linked with the inability to advance the deepening of the single market in recent decades at a pace that can ensure continuing growth and prosperity across the Union. Acknowledging this, and that the existence of an effective dispute-resolution mechanism is necessary to ensure that when tensions arise the permanence of the Union is not put at risk, is the first step towards understanding the root causes of the situation that the Union finds itself in.

Regarding fiscal policies in particular, it is acknowledged that all monetary unions need a common macroeconomic stabilisation function to deal with shocks that cannot be managed at the national level alone, as once again stressed by Mario Draghi in 2014. The *Five Presidents' Report* (European Commission 2015, 14) sees such a capacity 'as the culmination of a process of convergence' and as paired with the 'further pooling of decision making on national budgets'. For economic policies in particular, the report suggests that the capacity of the system of Competitiveness Authorities it proposes could be extended beyond tracking wage competitiveness. The proposed structure, given what exists and is proposed, exhausts the capacity of economic policy coordination that, based on both the principle of subsidiarity and the principle that national parliaments implement economic policies as enshrined in the Treaty on European Union, has been the working principle of the EU since its inception.

On the other hand, 'convergence in institutions', especially at the national level and with respect to the institutional and administrative capacity of member states to adhere to the 'minimum high-level standards' that are needed to ensure the single market's success, has not been a direct target of determined EU-level scrutiny, even if it is mentioned in the *Five Presidents' Report*. In particular, the quality of national institutions and the corresponding economic structures that are the focus of optimum currency area theory had been missing from this exercise, but have now been recognised as a key prerequisite for sustainable income convergence (European Central Bank 2016). It appears reasonable to argue that the transition from policy coordination to common decision-making in the economic and fiscal spheres must be based on an evolution of existing EU law and practices. But the current proposals definitely fall short of Mario Draghi's (2014) call in Helsinki for 'sovereignty over relevant economic policies, and in particular structural reforms, to be exercised jointly'.

Political margins are gaining ground

In the meantime, forces from the political margins are gaining ground in the post-truth era, and many pundits think that the path to global integration has stalled. We see it differently. The schism in societies that is currently underway, even in prosperous Western democracies, is more of a victory for globalisation than a defeat. Globalisation has broken the nationalistic backbone of European societies, and we are only now experiencing the dramatic consequences. In other words, those who are working well with, or at least are willing to work with, globalisation are clearly decoupling from the archaic part of their national ethos. Resentment among globalisation's losers, on the one hand, and contempt among the winners, on the other, dominate the current climate.

European integration, through both the single market and the common currency, has been at the forefront of this process, which is why the European dream is now so unpopular among EU citizens, especially the 'left behinds' (Fukuyama 2018). In other words, the EU project works well for the mobilised, but the free movement of goods, people and capital leaves behind those who cannot follow. Readers familiar with basic economics will notice that this process is almost inevitable. Free trade is not a zero-sum game, but leaves behind losers. Pro-European political forces would say that it is Europe's responsibility to take care of the 'forgotten' by using a social safety net. But for this to be possible in an era of 'race-to-the-bottom' global capitalism, Europe needs major institutional changes.

Elevating 'European democracy' and 'European competences' amidst rising populism is essential to preserving Europe's democratic foundation. Communicating such changes to citizens in ways that they can accept is vital in an era when the dichotomy between national and supranational competences seems to be widening. This is particularly critical at the moment as Europe faces elections in 2019 that have been dubbed 'the next battle for Europe' (Koerner 2018), in which the EU will struggle to restrain rising populism amid massive national political turbulence, particularly in France and Italy.

What has to be done?

In this context, it is critical to consider reforms aimed at increasing the voice of European citizens (Mitsopoulos and Pelagidis 2017). It may also be time to enforce localism as a way of promoting democratic decentralisation while avoiding a further weakening of the European unification project.

While democracy is rooted in the European treaties, and in the national constitutions of the member states, there are no minimum qualitative standards for European and national democracies. Such standards, though, could be useful and desirable in two ways. First, they could make democracy more visible to citizens, and make them feel in control of the destiny of Europe and, by extension, their own destiny. Second, they are necessary to convince European citizens to accept the needed reforms that will deepen the single market and enhance the growth prospects of the Union. While making this point, it is also

appropriate to recall that the draft European Constitution was rejected largely because its complexity did not communicate clearly to citizens how they would remain in control of European democracy.

Two initiatives would fundamentally enhance European democracy:

1. Give citizens more power when they vote for the European Parliament. Move away from the current national election rules that only permit closed lists, as is already the case in an increasing number of member states, and open them up to allow voters to select individuals even if they belong to different parties, as is allowed in Ireland. A lower standard would be to make sure that all member countries have at least partially open lists, with voters allowed to choose from a predetermined list of candidates for each party.
2. Improve further upon the current nomination process for the president of the European Commission through the Spitzenkandidat process. One such improvement would be to allow the direct popular election of the Commission president, followed by her or his automatic nomination in the absence of an opposing majority from the European Council. Having been granted such further enhanced legitimacy, the president should have an increased say in the selection of commissioners. One way to achieve this could be to allow each member state to suggest a short-list of two or three candidates, from which the president then selects one candidate to put forward for confirmation. Today the president simply selects the portfolios of each commissioner proposed by each member state, before submitting them to the European Parliament for confirmation. Such a visible and substantial democratic mandate for the Commission would be a useful enhancement of its mandate as guardian of the treaties.

The above two changes could materially increase the quality and power of the democratic mandates that the legislative body of Europe and the European Commission receive. This is because through this increase in both the quality and the quantity of the democratic mandates, the existing border between national and supranational competences would be moved as far as the precedence of laws and case law could justify. In particular, should a member state be taken to the European Court of Justice and convicted of not properly harmonising national legislation with EU law, European law could automatically take precedence over national law and bind the national administration.

Conclusion

The current age is one of increased populism and of the suffocation of democracy (Browning 2018). Both are a result of the perceived failure of Europe to deliver what it promised to a substantial share of its citizens. Thus, at this time it is crucial to address head-on the faults in the design of the 'United Europe'. The 'kicking the can down the road' mentality that created this apparent impasse cannot be part of the solution for the problems it helped to create. Ensuring that EU citizens benefit increasingly and visibly

in their daily lives from the high quality of EU institutions, as they rectify the weaknesses of national institutions, is the only response that can restore the popularity of the European idea. This is especially true in the institutionally weaker member states. But it needs to be paired with a decisive, Hamiltonian-style move to give EU citizens more visible power over Europe (Cliffe 2018). In particular, European citizens need to see more clearly the connection between their voice in the elections for the European Parliament and the formation of EU law, and their voice in the election of the European Commission and the implementation of these laws at the national level in a way that overrides the domestic political equilibria supported by those that oppose the deepening of the single market in favour of their own vested interests. Such a step would imply meaningful progress towards a 'closer Union'. It would ensure, in the case of disparities, the precedence of economic policies that have been decided jointly, and that deadlocks between national and supranational entities could be resolved through the enforcement of EU law at the national level, rather than through measures such as threats of expulsion or the imposition of fines. Having placed economic policy on such a path, fiscal and monetary policy challenges would also ultimately be easier to tackle.

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The *Khuligan* approach: A three-step guide to Vladimir Putin's tactics

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Roland Freudenstein

Many accuse Russian President Vladimir Vladimirovich Putin of having been a *chekist*, a member of the USSR's secret police and intelligence service. I've always thought this a bit unfair—in any event, it doesn't do justice to his resume in its entirety. For what was he before he became a trusted officer of the KGB? He was a *khuligan*—what a beautiful appropriation of the time-honoured Anglo-Irish word 'hooligan'. Putin the *khuligan* was a member of a street gang in his early to mid-teens, in the urban backyards of 1960s Leningrad. He is openly proud of this time, calling it his 'street "university"' (cited in Hill and Gaddy 2013, 93). My claim is that much of Putin's behaviour today, as president of a Russian Federation highly centralised around his person, can be explained by the core takeaways from those Leningrad years. The key points concern his capacity to fight enemies seemingly stronger than himself, his uncanny ability to turn causality on its head and his keen sense of his opponents' psychological weaknesses.

Asymmetrical warfare

Putin is, for a Russian, comparatively short and skinny. This means that, back in the day, he frequently had to contend with opponents considerably taller and heavier than he was. And this can only have meant that he had to be faster, more determined and more ruthless than they were. He had to know exactly where to strike to exert maximum pain. Allegedly he developed a technique whereby he would jump up on taller opponents and punch them in the face from above. All of this means that asymmetrical warfare is in his DNA. And this certainly pays off in a situation where the economic, technological and even the

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overall military balance between Russia and the West is definitely not in the Kremlin's favour.

Victim–culprit reversal

When squaring off against you, Putin—like any good *khuligan*—always leaves you a choice. First, he punches you in the nose, and then he says:

You can decide how to proceed now. You can be stupid and try to hit me back, which I would strongly warn against, or you can be reasonable and give me your wallet. And then I will smile at you again and not punch you for a while. So each of us is giving something here—it's an honest compromise.

In my humble opinion, this is a fair rendering of, for example, the Crimea/Donbas confrontation with Ukraine and the West. From the annexation of Crimea as a 'reaction' to the democratic upheaval in Ukraine in 2014 to the utterly unwarranted attack on Ukrainian ships in the Kerch Strait in late 2018, Putin has—at least in the eyes of many Russians and a number of gullible Westerners—only reacted to threats against Russia's vital interests.

Spotting fear and indecision

Another survival skill of a successful *khuligan* is the ability to sense, and even gauge, the fear in an opponent's eyes and to adjust his own actions accordingly. This skill is vital today, when Russia is weaker and often outnumbered. The development of Russian military doctrine to include a first strike with nuclear weapons is a case in point (Assenova 2019). On that memorable first weekend after the occupation of Crimea in early March 2014, the Kremlin's chief propagandist Dmitry Kiselyov—on prime-time Russian TV and against a backdrop of missile silos and mushroom clouds—famously called Russia 'the only nation that can reduce the United States to radioactive ashes' (cited in Kelly 2014). This made the news on prime-time TV in the West the following evening, especially in Germany. Mission accomplished, Mr Putin! It's true that the EU's sanctions regime against Russia probably wouldn't have lasted longer than a few months without the leadership of Chancellor Merkel. But looking at Berlin's failure to see the danger posed by the NordStream 2 pipeline project, and its staunch refusal to come even close to honouring its commitments in defence spending, one could get the impression that, when it comes to making others fearful and indecisive, the little *khuligan* in Putin has been doing awfully well in Germany.

The response

The obvious answer to all this is to proceed just as one would with the bully down the street: Confront the *khuligan*! This would involve taking risks. But *khuligans* are not suicidal. A third world war is not on the cards. The West has to brush up on its

self-defence techniques, immunise itself against the Kremlin's logic and improve its own determination. All this can be done without us becoming *khuligani* ourselves. But it would work miracles in the next confrontation—which is only a question of time.

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Reducing Irregular Migration Flows through EU External Action

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Vít Novotný

Irregular immigration is emerging as a threat to the political stability of the EU. The EU's asylum and immigration system has been overly tolerant towards irregular migration and not attuned enough to legal migration, particularly with regard to skilled migration. Furthermore, countries in the vicinity of the EU, particularly in North Africa, have yet to develop functioning asylum and migration systems. And despite a dramatic decrease in the number of migrants and refugees coming to Europe, the need remains to instil in the European public a sense that the EU border is properly guarded and that the number of illegal border crossings—as one aspect of irregular migration—is being reduced. In the short to medium term, the EU should help to ensure the protection of the refugees who are hosted in other countries. It should provide the requisite financial and political support to the hosting governments in order to ensure the basic welfare of migrants. The EU should resettle the most vulnerable refugees through legal channels at the expense of irregular migration movements. Where individuals are granted asylum following interception at sea, they should not be allowed to settle in the EU. Instead, the Union should negotiate with non-EU ('third') countries about accepting these individuals. Finally, the EU's external border needs to be vigilantly policed in order to increase public confidence in the EU's migration policy. As part of this recommendation, the EU should continue assisting third-country coastguards to undertake search and rescue operations, and to bring the rescued individuals back to their own countries. Over the long term, the EU should set itself the goal of enlarging the area of migration and asylum governance by incentivising non-EU countries to adopt asylum legislation in order to fulfil their obligations under the Refugee Convention of 1951 or equivalent international instruments.

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The Empire Strikes Back: Brexit, History and the Decline of Global Britain

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Eoin Drea

For those seeking to understand the debate in Britain about leaving the EU, it is important to understand that history—or rather a certain Eurosceptic Tory interpretation of British and Imperial history—played a key role in building and sustaining the momentum for Brexit, both during and after the 2016 referendum. In this context, the process of Britain leaving the EU can be seen as the triumph of a misrepresented and selective view of British Imperial history and an unbending view of the primacy of the nation state. This narrative was combined (quite quickly and unpredictably) with a rise in economic nationalism and populism stimulated by the global economic crisis that commenced in 2007. This combination, in turn, challenged long-established political norms such as Britain’s membership of the EU. These were challenges that were largely based on a mutated form of British declinism and a fatalist view of the EU. Ultimately, this paper concludes that it is not in the interests of Brussels that Britain should either seek to remain (or gain re-admittance in the future) as a full member of the EU. Rather, Britain’s historical self-conception is more conducive to a looser, yet clearly defined relationship with Brussels, based on shared political, economic and security interests. Such an arrangement—a bespoke Anglo-Continental compact—is more consistent with Britain’s political realities and accepted historical narratives. It will also better preserve the integrity of the EU’s internal cohesiveness, which since 2016 has become unavoidably intertwined with Britain’s search for relevance in this post-colonial age.

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Rebalancing the Euro Area: A proposal for Future Reform

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Juan E. Castañeda

Under a monetary union, fiscal and monetary discipline have to go hand in hand if macroeconomic stability is to be maintained. The question is how to set up the right institutions to achieve this stability in a credible manner. This policy brief proposes a new institutional arrangement for the euro area to restore fiscal discipline. It places the responsibility for compliance entirely on the shoulders of the member states. It also provides for the mutualisation of 30% of the member states’ debt-to-GDP ratio. This would help to maintain a stable currency and to limit the risk of contagion should another crisis occur in the future. However, this comes at a cost. Under the fiscal scheme proposed, member states, which would be fully fiscally sovereign, would need to run long-term sound fiscal policies to benefit from euro membership. In addition, this brief proposes a reform of Target2 under which overspending economies would have to pay the financial cost of accessing extra euros, which would deter the accumulation of internal imbalances within the euro area. All this is expected to change the current fragility of the architecture of the euro, provide member states with the right incentives to abide by sounder economic principles and make them fully responsible for the policies they adopt.

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Brexit and the Irish question IN FOCUS - Part Three: Solving the Border

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Michael O'Neill

The ‘known known’ in the basket of uncertainties that is Britain’s withdrawal from the EU is the intention of the Commission’s negotiating team to maintain the integrity of the four freedoms. On the British side the objective is to enjoy some of the benefits accruing from its EU membership, whilst at the same time seeking to fulfil the democratic mandate to leave the EU conferred by the referendum verdict. In large part the withdrawal negotiations that ensued after the British Government invoked Article 50 have been a contest between these quite different, indeed conflicting, mandates. Both sides, each from its own standpoint, have offered quite different solutions to the conundrum of the Irish border. With Brexit day fast approaching, this singular issue has become a proxy for the altogether wider question of future EU–UK relations. At the time of writing, the entire sweep of these tense negotiations is concentrated on resolving the ‘Irish Question’—without success until finally a ‘technical’ agreement’ was reached by the negotiators. Whether this ‘solution’ will survive resistance from arch-Brexiteers remains to be seen.

Author biography



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Summary

Keywords: Brexit, Irish question, EU, UK, border, negotiations, Article 50, withdrawal, four freedoms, democratic mandate, Brexit day, technical agreement, arch-Brexiteers.

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Political Subversion in the Age of Social Media

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Edward Hunter Christie

The information space that is used by voters, politicians and interest groups in Western nations is being contested and challenged by new risks and threats, both from within and from without. The aim of this report is to identify some of the main vulnerabilities with respect to current forms of political subversion, and to propose a set of policy principles to guide ongoing reflections on how best to respond to that challenge. Four areas of vulnerability are identified, namely individualised political messaging, group dynamics and political polarisation, platform algorithms and self-radicalisation, and falsehood dissemination dynamics. This leads to the formulation of four proposed policy principles, followed by a discussion of the extent to which recent measures, in selected Western nations and at EU level, are sufficient to address the challenge at hand.

Author biography



Edward Hunter Christie is an analyst at the Strategic Analysis Capability section, Emerging Security Challenges Division, NATO Headquarters. An economist by training, he worked as a research economist at the Vienna Institute for International Economic Studies from 2002 to 2010. After a period in EU affairs as Senior Policy Advisor and Chief Economist for a trade association, he joined NATO's International Staff in December 2014. He has published on a range of security- and defence-related topics, including energy security, economic sanctions, European defence spending, Russian defence spending and disinformation.

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The Four ‘Classical Federalisms’

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Federico Ottavio Reho

This paper aims to provide a critical analysis of the federalist doctrines that influenced the development of European integration. It argues that four federalist visions emerged at the dawn of European integration, each with its own specific ideological background and its own idea of what the federal Europe of the future should look like. The progressive federalism of Altriero Spinelli was different from the technocratic federalism of Jean Monnet, as much as the liberal federalism of Luigi Einaudi diverged from the personalist federalism of Christian Democrats. The paper also contends that the two federalist philosophies most influential throughout European integration—those of Spinelli and Monnet—are founded on a unitary view of sovereignty and care little about protecting and retaining local state identities. On the contrary, within the Christian Democratic tradition there developed a bottom-up, culturally rooted federalism that was mindful of national and regional autonomy and averse to the concept of absolute sovereignty, be it national or European. Today, it is from this tradition that we should draw inspiration to redesign a more legitimate EU.

Author biography



Federico Ottavio Reho is Strategic Coordinator and Research Officer at the Wilfried Martens Centre for European Studies, where he is responsible for all research on political parties and EU institutions. He previously worked in the EU Institutions and Fora Division of the European Central Bank. He has studied European politics and political economy in four European countries, including at the London School of Economics and the Hertie School of Governance (Berlin). Since 2018, he has also been a D.Phil. candidate in history at St Anthony’s College, University of Oxford.

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Women in a Man's World: Labour Market Equality Driving Economic Growth

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Ronald Bachmann and Peggy Bechara

Gender equality is one of the core principles of the EU. This is set forth in, for example, Article 2 of the Treaty of the European Union. Equality between men and women includes equality in the labour market. However, this equality is far from having been achieved. Building on our forthcoming research for the Martens Centre, we explore in detail four factors that may explain the gender gap in labour force participation across countries. These factors are education, taxation, the provision of childcare, and cultural and historic norms. In discussing these factors, we focus on case-study countries which represent different regions and feature diverse institutional characteristics: Germany, Italy, Poland and Sweden. Through this analysis we propose four policy actions designed to place gender equality in the labour market at the heart of a growing European economy. These are (1) the promotion of better work-life balance (2) embedding equality in national tax systems (3) tackling gender stereotypes through education and (4) understanding the benefits of long term investments for long term gains in terms of equality policies. To conclude, we acknowledge that it is preferable to implement policies that are tailored towards the institutional and cultural settings in each country and to specific groups of workers. Thus it is important that gender policies should be established at the national level. Rather than seeking to expand its competencies in the areas of education, taxation or social policy, the EU should focus on setting overall objectives.

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Brexit and the Irish question IN FOCUS part two: Brexit's unintended consequences. Five key challenges

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Michael O'Neill

Since 1998 the Irish border has become invisible, more conduit than barrier between Ireland North and South and at every level. Cross-border trade has expanded exponentially and increasing civic engagement is both entrenching and normalizing the peace process on both sides. The border region is slowly but surely becoming as much a shared civic and political, as a merely functional or economic space. The prospect of a reinstated border threatens that endeavor, concentrating minds in both communities, in government and in Brussels about the malign consequences of what seems to most observers to be an entirely retrograde move. In these uncertain times, the likelihood is that the significantly altered status of the post-Brexit border will have far-reaching and mostly negative consequences for future relations on the island of Ireland, and at every level. Brexit threatens a fundamental reversal of a tentative yet tangible peace process, a fundamental downshift in political, commercial and civic relations that means North-South co-operation cannot continue on present terms. Certainly not, if as seems likely, quite different economic and regulatory arrangements will pertain in the island's respective political jurisdictions, a fact that will become even more conspicuous with a reinstated and formal border.

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