



## RETHINKING EUROPEAN UNION ACTION: EUROPEAN ADDED VALUE – THE SENATE’S CONTRIBUTION TO THE EUROPEAN COMMISSION’S “SUBSIDIARITY AND PROPORTIONALITY” WORKING GROUP

*Committee for European Affairs*

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On 18 January 2018, the European Commission implemented a Task Force on Subsidiarity and Proportionality. This working group is composed of six members: three representatives from national parliaments appointed by the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC) and three representatives from the Committee of the Regions. It is chaired by Mr Frans Timmermans, First Vice-President of the European Commission. Three tasks were assigned to it:

- to determine if the procedures put in place regarding subsidiarity are working and to explore enhancement options;
- to define the areas in which the European Union should intervene and those which should be dealt with at a national and regional level;
- to better involve regional and local authorities in the European legislative process.

The Task Force should report on its findings by the summer. The results of its work will be fed into the Commission’s contribution to the European Council’s work on the future of the European Union which will be held in Sibiu (Romania), on 9 May 2019.

This report will serve as the Senate’s contribution to the working group established by COSAC to provide input for the considerations of the Task Force.

### **I. FAVOURABLE CONDITIONS FOR A BETTER APPLICATION OF THE PRINCIPLE OF SUBSIDIARITY**

- **The impact of Brexit**

The British referendum on the UK leaving the European Union leads us to reflect on the sphere of activity of the European Union. Although Brexit may reinforce the need for unity and cohesion, it must not overshadow the difficulties related to the functioning of the Union, in particular its lack of clarity and proximity to its citizens. This is linked in part to a form of bureaucratic mindset and to the legislative inflation that could ensue. A certain scepticism in public opinion has increased. The European political project has not, as yet, secured the wholehearted approval of the Member States. Added to this feeling of lack is a certain propensity to the “Brusselisation” of national failures. The emerging image of the European Union is

inevitably blurred, thus raising the question of the added value of its action. The question of a clearer division of powers and respect for the principle of subsidiarity is now more than ever at the heart of the discussions on the relaunch of the European project.

- **Subsidiarity and sovereignty**

All shared exercises in sovereignty must be carried out as a practical response to specific needs. These shared exercises should not be imposed on Member States and should be based on treaties and not based on a federalist reading of them. The Union remains primarily a federation of Nation States and not a Federal State in the traditional sense. The objective of the building of Europe cannot be reduced to one of uniformity. Harmonisation and

convergence leave a margin of discretion to Member States. However, the concept of subsidiarity should not be confused with a rigid vision of sovereignty. Subsidiarity has become, and with good reason, an important political tool. Where possible it should not

depart from its original aim, that of facilitating European Union action when the circumstances do so require and ensuring that public policy is not implemented in isolation within each Member State.

## **II. SUBSIDIARITY CHECK BY THE NATIONAL PARLIAMENTS: A PROCEDURE REQUIRING REVIEW**

- **Better justification of European Union intervention**

The European Commission should better justify the use of a legislative proposal and should not limit any justification for intervention to the further development of the internal market. The Commission's argument, stressing that the checks concern more with proportionality than subsidiarity must be rejected. On the contrary, the two principles share the same European constitutional corpus. Indeed, the two principles are intrinsically linked. It is also in light of this fact that the Commission must give proper consideration to the impact of all new legislation.

- **Improving reactivity**

Currently, national parliaments have eight weeks, from the date the draft is forwarded by the European Commission, to assess the respect of the principle of subsidiarity. This time limit may seem short and should be extended to ten weeks, and take into account holiday periods. In the event of reasoned opinion, the European Commission should also focus on responding more quickly – a twelve-week time limit should be set. It should also put specific emphasis on the arguments raised by national parliaments.

- **Scrutinising delegated and implementing acts**

The delegated or implementing acts, which the European Commission frequently uses, should be forwarded to the national parliaments for the purpose of monitoring compliance with the principle of subsidiarity. Indeed, delegated or implementing acts constitute supplements to legislative acts which are subject to this monitoring. Ultimately it is therefore only biased as long as the European Commission insists on its role when addressing the consultation phase of draft legislation.

- **A new orange card?**

The arrangement made on 19 March 2016 with the United Kingdom, but became

obsolete due to the result of the referendum, could also have been incorporated as regards subsidiarity. Consequently, where reasoned opinions on a Union draft legislative considering non-compliance with the principle of subsidiarity represent at least 55% of all votes allocated to the national parliaments, the Council Presidency should add this issue to the Council agenda so that these reasoned opinions and any consequences drawn from them are subject to thorough consideration. Following such consideration, representatives of the Member States may terminate the draft act in question or amend it in line with the concerns raised.

- **Should the Treaties be revised?**

Initial discussions within the Task Force also offer approaches which may become relevant.

The first concerns the thresholds adopted for issuing a yellow card. It is indeed possible to question the effectiveness of a mechanism that generally requires a third of national parliaments in order to bring about a simple review of the text. Under such circumstances, the threshold may be reduced. A second course of action consists in the possibility, for national parliaments, to review the text in the light of subsidiarity as soon as substantial changes in the course of negotiations in the Council and the European Parliament become known.

Consideration should be given to the possibility of implementing these options since they involve a review of the Treaties. It shall nevertheless be possible to promote a common declaration within the framework of COSAC, in which the European Commission undertakes to review the texts once a minimum threshold, lower than that under Protocol N° 2, is reached. This text also makes provision for a new forwarding of texts as soon as substantial changes have been made to them in the course of negotiations. This type of informal procedure is nothing new.

### III. BETTER DIVISION OF POWERS

Scenario 4 in the Commission's White Paper on the future of Europe, presented on 1 March 2017, envisages "Doing Less More Efficiently". This ambition is to be welcomed given that it should help increase the visibility of the European Union and improve the clarity surrounding its interventions. The debate on European added value should be placed within the framework of a more general reflection on the ambitions assigned to the European Union.

- **European power**

If European citizens do not accept a European Union that is too interventionist in daily life, they may prefer a Europe that asserts itself on the world stage, in particular in order to respond to security challenges. A European power or "a Europe that protects" covers several areas such as defence, security, management of the migration crisis with the emergence of a real European asylum law and trade negotiations. Achieving its goal should be one of the main objectives of our thinking on a better division of powers between the European Union and the Member States.

- **Rethinking the single market**

The European Union was established as a single market and it should not overlook this foundation. Scenario 4 in the European Commission's White Paper calls for better targeting of its economic intervention by concentrating on aid for innovation, consumer protection and the deepening of the Economic and Monetary Union. This approach should be supported provided it is identified. The Commission is now also committed to research excellence and the investment in new European-wide projects. It remains to be seen to what degree European Union action should represent real added value and not replace action by the Member States.

More broadly, the action of the European Union appears both justified and critical if it can serve to enhance the competitiveness of European companies and facilitate investment. It should support change and not curb it, while allowing plenty of scope for national strategies. The competition policy must also be in the interests of the European industrial policy and facilitate the emergence of European champions.

Furthermore, the Commission envisages being less involved in the different strands of social policy and employment and maintaining variable levels of taxation on all sides of the European Union. However, the Union needs to make progress in the area of social and fiscal convergence.

- **Encouraging a pragmatic approach to European action**

The Commission points out other areas in which the European Union should only intervene to support the Member States, such as public health and regional development. Member States would also benefit from more experimentation flexibility in certain sectors, such as consumer protection, hygiene and safety in the workplace.

The idea of a better division of powers should be welcomed. Nonetheless a pragmatic approach needs to be adopted rather than predetermining which areas the European Union should no longer intervene in. All regulation at a European level should demonstrate real added value, be comprehensible and not increase the administrative burden on the activity. We must also reject any harmonisation when this leads to uniformisation by reducing European citizens' rights.

Furthermore, we need to remain alert to the very nature of the legal texts proposed by the Commission. The practice has given rise to a new application of these instruments, namely regulations that broadly establish the option of national adaptation measures and maximum harmonisation directives, prohibiting the freedom of national legislators.

- **The need for simplification**

The intention announced by the Commission to limit its intervention on a regional level may raise legitimate concerns as European policy in this area contributes financially to the development of the regions. A simplification of the cohesion policy is essential if we want to highlight European added value at a regional level. The aim is thus to guarantee appropriation by citizens.

The case of regional policy raises the issue of simplification. Any questioning concerning the scope and intervention procedures of the European Union should be accompanied by a review on the simplification of rules and procedures which it has developed. The Commission should continue to work to

reduce legislative inflation and ease the regulatory burden. This helps to achieve a better application of the principle of subsidiarity. The need today is for fewer laws

and better lawmaking. Visibility and understanding of European action by European citizens entails such rationalisation.

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