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PROSPECTS FOR GERMAN FOREIGN POLICY

More Subsidiarity in Europe – but in the Right Place!

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The principle of subsidiarity is a key building block in the architecture of the European Union because it regulates the distribution of responsibilities between the EU and its Member States, thus contributing to the democratic process. However, the crisis in the eurozone and the related measures taken at national and European levels to improve the financial and economic situation have called subsidiarity as regulated in the EU since the Treaty of Lisbon (2009) into question. Therefore, advocates for stronger EU integration are calling for more coordination and policy design at the European level, while others are demanding European competences be repatriated to the national level and thus are calling for a strengthening of the principle of subsidiarity.

This paper explains the various arguments in the debate on subsidiarity and clarifies why a clear direction is so important for Germany's policy stance on Europe regarding this issue. This is followed by specific recommendations for action to achieve a new consensus on subsidiarity in Europe and to place European integration back on a firm foundation.

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I SITUATION

The principle of subsidiarity was adopted as the primary law of the EU in the Treaty of Maastricht in 1992 and set forth in Article 5 of the Treaty on European Union (TEU). It arranges the vertical separation of powers, i.e. the allocation of responsibilities between the EU and the Member States according to the following logic: the Union will “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, paragraph 3, TEU).

The aim, therefore, is to establish public accessibility and transparency and ensure democratic control and sovereignty. This is also intended to guarantee the efficiency of the European Process. Depending on the interpretation, the principle of subsidiarity is either a “barrier to exercising power” that limits the powers of the EU and ensures the freedom of Member States or a clear justification of the political leadership at the EU level if this leadership is able to achieve the common goals of Member States the most effectively.

Legal Situation

The subsidiarity principle applies only to the areas that fall within the joint responsibility of the EU and the individual Member States. For example, there is a shared responsibility for the internal market, social policy, economic, social and territorial cohesion, agriculture and fisheries, environmental policy, consumer protection, transport and trans-European networks, energy policy, the area of freedom, security and justice, common safety concerns in public health matters as well as some of the policies on research, technological development and space, and for the area of development cooperation/humanitarian aid (Article 4 TFEU).

In all these areas, the challenge lies in implementing the principle of subsidiarity and clearly distributing the responsibilities between the EU and the Member States. In areas where the EU or the Member States have exclusive jurisdiction, however, this is out of the question. According to current EU treaties, the EU is exclusively responsible for the customs union, competition rules for the internal market, the monetary policy for the euro countries and the common commercial policy, for example (Article 3 TFEU).

The Role of National Parliaments

The Treaty of Lisbon, which came into effect in December 2009, has established the national parliaments as “guardians of subsidiarity”. Since then, European institutions have been

obligated to inform the national parliaments of new legislative acts. If they are of the opinion that the principle of subsidiarity has not been complied within a joint area of responsibility, they may then take action. A *subsidiarity objection* against draft legislation submitted by an EU institution¹ is a possibility in the early stages of the EU legislative process. Following the adoption of a legislative act, a *subsidiarity complaint* may then be lodged with the European Court of Justice. A subsidiarity objection was successfully processed by the national parliaments for the first time in 2012: The European Commission retracted a proposal regarding the right of establishment and free movement of services (the “Monti II proposal”).

In Germany, after several complaints on the compatibility of the Lisbon Treaty with the German Constitution, the Federal Constitutional Court further strengthened the rights of involvement for the Bundestag and the Bundesrat in European Union matters in its judgement from 30 June 2009. Consequently, the ratification process for the Lisbon Treaty could only be terminated after the adoption of new laws, which, among other things, requires the approval of the German parliament before any powers are transferred to Brussels.

Current Developments

In addition to this already complex distribution of decision-making rights is the fact that the ongoing crisis in the eurozone and the resultant crisis management by the Member States and EU institutions has only exacerbated the debate on the issue of subsidiarity within the EU. Because of this, several complaints were lodged with the Federal Constitutional Court in 2010 against German and European decisions (primarily in relation to aid to Greece, the euro bailout packages and the fiscal treaty). The reasons for these complaints related to a reduction in parliamentary policy-making opportunities due to shifting functions and powers at the EU level. Although Karlsruhe has approved all EU decisions to date², these proceedings are proof that the debate on the distribution of powers in the EU is not yet over.

From a schematic perspective, the debate on the issue of subsidiarity in Germany is heading in two directions:

- on the one hand, “less Europe” is being called for; that is to say: less common responsibility, less financial solidarity in the eurozone, but also less EU bureaucracy and greater responsibility for the Member States.
- on the other hand, “more Europe” seems to be the best solution for overcoming the current challenges – primarily the crisis in the eurozone and the development in a global and multi-polar world.



II ARGUMENTS

A clear stance by the German government on this debate over power in Europe is necessary for three reasons.

First, citizens are unsettled when it comes to the meaning and the objective of the European process. It is therefore necessary to provide clarity in relation to the EU's responsibilities and instruments and rebuild confidence in Europe.

According to the Eurobarometer, nearly three-quarters of Germans (73 per cent) consider themselves citizens of the EU and two-thirds (66 per cent) are in favour of the Economic and Monetary Union and the euro, which are good results compared to the European average. But almost half (49 per cent) believe the effects of the crisis have not yet peaked in terms of the labour market, with only 55 per cent optimistic about the future of the EU. While some Euro countries fear a "German Europe", 59 per cent of Germans believe their vote does not count in the EU³.

This relatively negative sentiment towards the EU among the German population should not be underestimated as Euroscepticism promotes the development of national-populist and anti-European movements. Greece, France and Austria are currently prime examples of this. In the Federal Republic of Germany, the Alternative for Germany (*Alternative für Deutschland* (AfD)) party, whose core issue during the election campaign was leaving the eurozone, only just missed gaining entry to the Bundestag in September 2013 with 4.7 per cent of the vote. A similar or more successful vote in the upcoming May 2014 European elections would secure this party multiple seats in European Parliament, which can only succeed in further complicating European cooperation.

Second, two governments have started a precarious reflection on the principle of subsidiarity in Europe.

Since the summer of 2012, the British government has opened the floor for consultation, including a debate among the population – especially under pressure from the EU-critical Tories and the anti-European UK Independence Party – in order to draw up a sort of balance sheet of British EU membership after 40 years. The aim is to review all EU core competencies based on 32 reports by December 2014. This so-called *balance of competences review* should then form the basis for renegotiation regarding Britain's integration

into the EU. Prime Minister Cameron will only organise a vote on the fate of Great Britain in the EU in 2017 once European powers have been transferred back to the national level.

The outcome of this initiative remains unclear, especially since parliamentary elections will be held in 2015 and more and more voices are calling for a referendum before then. In any case, it is certain that the *Review's* first six reports, which were published in July 2013 and have addressed the subjects of the internal market, taxation, health, and foreign and development policy, have clearly emphasised the added value of EU membership for the UK⁴.

The Dutch government also wants to transfer EU powers back to The Hague. In the summer of 2013, it identified 54 areas/laws that would be better anchored exclusively at the national level and it would now like to launch an initiative in this direction without having to modify the EU treaties. This list of 54 "Points for Action" should first be discussed in the Dutch parliament, followed by discussions with EU institutions and then other Member States⁵.

Third, the eurozone crisis has shown that the current subsidiarity regulation in the EU is not optimal.

The European Union is currently suffering from the fact that 18 Member States share a common currency, the euro, but not a common economic and financial policy. The following elements have caused the Economic and Monetary Union to falter: excessive debt and deficits in some euro countries, too much discrepancy in competitiveness among Member States and a lack of structural reforms to promote growth and employment. Because of this, Europe has lost out on economic power and attractiveness. Greater coordination at the EU level therefore seems necessary in this area in order for the EU to emerge stronger from the crisis.

Over the past few years, this issue has been heavily discussed in the political and scientific spheres in Germany and has led to intense debates, including regarding the necessity of developing an "economic government" for the eurozone – a concept that is understood very differently in the capitals of EU Member States. Linked to this is the question of the further use of the intergovernmental method; even though this has contributed to the rapid development of EU mechanisms to combat the crisis since 2010, it has met with public criticism.



III RECOMMENDATIONS

Some measures can be taken within Germany to achieve a new consensus on subsidiarity in Europe *in fine*. To that end, the following recommendations have been made for a more democratic, streamlined and effective EU.

For Greater Democratic Control in the EU

1. Greater Scrutiny of Subsidiarity by National Parliaments.

As yet, the number of reasoned opinions in the national parliaments has remained very low in the context of subsidiarity objections. All chambers of the national parliaments, including the Bundestag and the Bundesrat, should make better use of the “**interference clause**” provided by the Lisbon Treaty regarding European matters.

This is not easily done, as, among other things, the eight-week deadline must be taken into account for raising a subsidiarity objection and the times the national parliaments are in session are often unfavourable. Therefore, it is important to achieve a certain level of **professionalism in every parliament** in order to act quickly in this regard.

An **intensification of inter-parliamentary cooperation** and a culture of mutual support would also aid parliaments in effectively interfering in European affairs. Good instruments and structures are already in place, such as the online platform IPEX for the exchange of information or the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC), which could be put to greater and more effective use.

A **more frequent cooperation between the members of national parliaments and the European Parliament** and a more intensified **transnational network of parties** within their political families and beyond the contacts that already exist in Brussels would also be of added value for this purpose.

Even if a complaint does not represent a suspensive veto and only triggers a duty of consideration, it can **exert political pressure** – especially if enough parliaments participate. In doing so, greater consideration of the opinions of national parliamentarians on European policy could be achieved, which would contribute to an increase in democracy in the European architecture.

2. Return to the Community Method

Over the past few years, intensive intergovernmental cooperation has been necessary to brave the eurozone crisis quickly and effectively. In the medium term, when the debt crisis in the eurozone has finally been overcome, and stability has returned to the Monetary Union, the community method should once again become the EU’s main decision-making process for all decisions outside of the Common Foreign and Security Policy. To do so, the European Council must strongly reflect once again on providing policy outlines rather than on making decisions on individual issues. This would **strengthen the authority of the European Commission, European Parliament and that of the Council of Ministers** and allow the European Union to function more transparently and democratically.

To increase the acceptance of European legislation among its citizens, it would also make sense to **grant a right of initiative in EU legislation to the European Parliament**. The debate among parliamentarians associated with this would slightly boost the perception of European practices in the public sphere.

For a More Streamlined EU

3. Accept Criticism and Proceed Constructively

The current British and Dutch treatment of the principle of subsidiarity in the EU should be taken seriously and should also be welcomed in part because the basic idea – “to create a more moderate and more effective European Union”, which would only act “if necessary”⁶ – is correct.

Today it is becoming increasingly clear that **too much EU regulation on European cooperation is ultimately damaging**. Over the past few months, the discussions on banning oil dispensers on restaurant tables or high-heeled shoes for hairdressers have justifiably been met with mockery and indignation across Europe.

One can also legitimately ask whether it really makes sense to regulate the shape, size and ingredients of a pizza Napoletana at the EU level (in accordance with the Council Directive (EC) No. 509/2006). Currently, those in Brussels are debating over whether a quota for women is necessary for Europe’s listed companies. In both cases, it is doubtful that such a standardisation of the law really **offers added value for the people of the EU**.



4. Re-allocating Targeted Powers

In his State of the Union address on 11 September 2013, José Manuel Barroso said, "The EU needs to be big on big things and smaller on smaller things." According to this principle, the Commission will now examine the European directives and legislative projects and may withdraw unnecessary regulations. **Clearly Germany should support Barroso's initiative for a greater degree of subsidiarity in the EU.** This is also the case for the EU working group headed by former Bavarian Prime Minister Edmund Stoiber, who has been working on **cutting red tape in the EU** since November 2007.

A re-allocation of competences on issues that – like the oil dispensers and the heels – should instead be resolved nationally or locally would send a **positive signal to citizens**, who often have the impression that "Brussels" dictates their everyday lives. It would also **weaken many anti-European parties** that are scoring points with voters with their criticism of some absurd EU regulations. Very few people actually know that many attempts at regulation by the EU Commission can be traced back to proposals by the Member States. The Commission should therefore also more aggressively **reject some proposals by the Member States** to increase subsidiarity in Europe.

5. Ensure a Common Approach

For this re-allocation of powers to be successful, it is important to ensure that a common European process takes place and a **strengthening of the principle of subsidiarity is achieved throughout Europe.** In this sense, the British and the Dutch approach should not be used as a model because both cases represent solo efforts. For example, London is currently considering which EU powers it would like to return to the UK and not what would make sense for the 28 Member States.

If all the Member States now began debating on national powers and reclaiming certain EU powers as their own it would spell the end of the "acquis communautaire". The EU would be in great danger of breaking up. The German government should therefore take a clear stance **against the British model of an "à la carte" Europe.**

For a More Effective EU

6. Not "More Europe," but a Better Europe

In exchange for the transfer of EU powers in areas where uniform European regulations are not beneficial for the Member States, **EU coordination in essential areas should be reinforced.**

This is especially true for the following policy areas:

- The **economic and financial policies** to overcome the eurozone crisis in the long term and to ensure sustainable stability of the euro;
- The **Common Foreign and Security Policy**, so that the EU – despite the decline of their population – can play a greater role on the international stage in the future;
- **Energy and natural resource policy** in order to defend the interests of Europeans in international competition and to ensure the security of supply on the continent;
- **Environmental and climate policy** because Europeans are the only ones who can ensure – when they speak with a unified voice – that these issues are discussed and dealt with on an international level.
- The repeated refugee tragedies off the coast of Lampedusa in the autumn of 2013 also indicate the extent to which a humane and solution-oriented **asylum and migration policy** is necessary at the EU level⁷.

7. More Coordination Does Not Mean Less Power for the Member States

The aim must be to achieve greater cooperation at the EU level in the core areas mentioned above. The German government should therefore make it clear that **those measures that may lead to an increase in EU cooperation without transferring power to Brussels should be discussed and implemented at the EU level as quickly as possible.**

It must be made clear to all Member States that there can be **no "diktat" of European institutions** because their work is only carried out on the basis of common decisions made by Member States.

In terms of financial and economic policy, the **focus must be on promoting the banking union and regulating the financial world**, on effectively combating **tax evasion** and ensuring success in the **European Semester**. Only with the cooperative will of the Member States can the **"contracts for competitiveness and growth"** between EU institutions and the respective capitals become reality; these have been in discussion since the December 2012 EU Summit and would help countries implement structural reforms.



8. Remaining Pragmatic

Germany should advocate for a reorganisation of the division of powers in the EU and for a pragmatic approach in doing so – be it to achieve a re-transfer of certain EU powers to the national level or to implement greater EU coordination in key areas. In this respect, **all the tools provided by the current EU treaties should first be used** before considering the project of changing the EU treaties and possibly holding a new European Convention.

The fact is that the Europeans are only at the beginning of this debate on subsidiarity, and that many of the mechanisms within the current EU architecture must be given a chance for this purpose. As is often the case in Europe, the **determination and cooperative will of the Member States** will play a crucial role in this process and will be important for the quality of European integration in the future.

- 1] *This affects proposals by the EU Commission, initiatives from a group of Member States, initiatives from the European Parliament, proposals by the European Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank (Protocol 2 of the EU Treaties).*
- 2] *The Federal Constitutional Court is still in the process of ascertaining whether the ECB's course in response to the crisis (the possible unlimited purchase of bonds in euro crisis states) is unconstitutional.*
- 3] *"Public Opinion in the European Union", Standard Eurobarometer 79, Spring 2013.*
- 4] *The reports from the first term can be found here: <https://www.gov.uk/review-of-the-balance-of-competences>.*
- 5] *List of "Points for Action" can be found at: <http://www.government.nl/documents-and-publications/notes/2013/06/21/testing-european-legislation-for-subsidiarity-and-proportionality-dutch-list-of-points-for-action.html>.*
- 6] *See: David Lidington, British European Minister, 24 June 2013.*
- 7] *A humane and solution-oriented asylum and migration policy at the EU level is also important in light of the ageing European population. Migration simultaneously represents a security issue, a humanitarian challenge and an important economic factor. For more on this, see: Arbeitskreis Junge Außenpolitiker, "Globale Megatrends (II): Demographischer Wandel", Analysen und Argumente, No. 135, Sankt Augustin, 5 Nov. 2013. <http://www.kas.de/wf/de/33.35944/>*