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MULTILEVEL GOVERNANCE (MLG) AND SUBSIDIARY PRINCIPLE IN WHITE PAPER OF MLG OF THE COMMITTEE OF THE REGION (COR)

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Abstract: *This paper tries to review the relation between the MLG and Subsidiarity Principle as seen in the context of the debate over White Paper of Committee of the Region (CoR). First of all, the subsidiarity principle is part of the multilevel governance. Secondly, according to the subsidiarity principle, the political arenas could easily stay interconnected rather than nested, as stated by a major thesis of the multilevel governance paradigm. Finally, subsidiarity considered through the Lisbon Treaty seems to allow CoR become a genuine community institution, which seems to be a paradox considering that it has been conceived to prevent community institutions from blocking the competences of the Member States.*

Keywords: *Multilevel Governance (MLG), Subsidiarity Principe (SP), White Paper of MLG (WPMLG) Committee of the Region (CoR), Lisbon Treaty.*

The Committee of the Regions (CoR) White Paper of *Multilevel Governance* was launched in 2009 and proposes to bring to the public discussions about how *multilevel governance* could support the implementation of the provisions of the Lisbon Treaty.

In general, the notion of “governance” has an ambiguous character, but in relation to this and with the many interpretations of *multilevel governance* is not only a governance with multiple characters but a governing in the levels of interdependence.

This means that, on the one hand, that the decision-making process goes beyond the representative institutions and other formal power was dissolved between central and institutions “above” and “below”. In other words, it is “a creative process in which political power and political influence are distributed between different levels of government”.

The main argument is that only the *multilevel governance* is best suited / most appropriate to mitigate the externalities (positive or negative produced by the provision of public goods at the most appropriate (Hooghe, Liesbet, Mark Gary, 2001b). The theory of *multilevel governance* must therefore be distinguished from the theory of centralism, which stipulates that the policy of the European Union is determined primarily by national governments, being the link between sub-national levels and European level.

Multilevel governance theory has many connotations in the literature. According to Hooghe and Marks (2001a) a difference has been made when we talk about *multilevel governance* between a deeper form of cross-territorial convergence and coordination while the latter refers to *ad hoc* policy association. Trondal (2009) proposes two types of administrative fusion: the first is showing characteristics of an emerging EU model of administration to encompass other territorial levels, and the second is allowing for more

variation and diversity in the shape of politico-administrative relations. Besides, practitioners, regional and local actors and informed members of the public also express their own set of views on *multilevel governance*, values which are influenced by their sector and territorial position and their everyday encounters with the EU governance system (Antonopoulos, E: 2009). From these three examples we can notice that sixteen years after Gary Marks introduced the novel concept of *multi-level governance* in view of characterizing the specific policy-making process regarding the structural funds, this concept should not become a victim of its success, as Frank Delmartino states in 2009 in his commentary about the *White Paper on Multilevel Governance*.

The relationship between the MLG and the subsidiarity principle involves several viewpoints. For instance, Nicolas Levrat considers that MLG is accompanied, not without paradoxes, by a progressive institutionalisation combined with an amazing marriage with the subsidiarity principle. Moreover, the declension and enforcement of this governance could relaunch a positive institutional dynamics that, after endless equivocations relating to the difficulties of the treaties' reform, would place the latest European institution – the Committee of the Regions – at the core of the integration process through an original institutional partnership proposal with the Commission (Levrat N., 2009).

Simone Piattini considers that MLG is a method, a process – or, according to the CoR, *the* method and process – for deciding and implementing shared and efficient EU policies. It is in this context that the WPMG offers a novel interpretation of subsidiarity as partnership in the MLG space (Piattoni, 2009).

1. MLG and a novel interpretation of subsidiarity by the White Paper on MLG

Since the Treaty of Maastricht (TEU), the concept of subsidiarity is defined as a regulating principle of EU – Member States mixed competences (Barbulescu, I. Gh., 2008: 140). This principle allows the Community to legitimate its powers and the states and regions to “defend themselves from excessive and/or untimely incursions of the Community” (Barbulescu, I. Gh., 2008: 140; Constantinesco, V., 1991a). As this principle has been enforced, it has acquired a fundamental ambiguity: far from being a univocal concept, it is rather an “inherently contested” concept. Each tier of government, and even non-governmental actors, interpret it to suit their own agenda. To Member States, subsidiarity means that the Union should tackle only those issues which the Member States cannot effectively handle themselves to local and regional authorities. It means that action should be taken at the closest possible level to the ultimate receivers of the policy, that is, at the local and regional level; to non-governmental organisations, subsidiarity means that the state, at whatever level, should avoid meddling with issues that society can handle on its own. The concept has been, in other words, a political tug-of-war: a restatement of the disagreement over which actors are legitimated to decide over which issues. The WPMG puts an end to this debate and establishes that *subsidiarity implies that all these levels and actors should be simultaneously involved* and establishes a *de facto correspondence between subsidiarity and partnership*. The CoR appears so committed to this new understanding of subsidiarity that it is joining forces with the Council of Europe in order to promote a “pan-European consensus on [this understanding of] multilevel governance” (Piattoni, 2009).

In the opinion of Anna Augustyn, MLG is a mechanism that operates more effectively while being connected with the subsidiarity principle (linking responsibilities of different actors with the characteristic of their interaction). I interpret this principle as

the way of decision-making that happens "as closely as possible to a citizen" (Lisbon Treaty). In case there would be a problem that could not be solved in an immediate environment (level) of a citizen, other environments (levels) are more appropriate to undertake steps in this direction. The decision which actor at which level in a multilevel governance setting could be responsible for problem-solving should depend on the assessment of possible changes to be caused by intervention(s) available (considering such aspects like problem solving capacity, performance, effectiveness, cost-benefit, etc.).

Obviously, the need for a more detailed assessment is related with the nature of certain problems: "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union 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 levels, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level" (Lisbon Treaty, Art. 5.3). Most of the articles mentioning the subsidiarity principle within the Treaty refer therefore to the "check" whether decision/lawmaking within different authorities respects this. The White Paper adds some points to this, especially while mentioning the role of the CoR as a facilitator and subsidiarity watch-dog in multi-level governance setting.

Taking into account the interpretations of the subsidiarity principle resulting from the Union's law, its basic applications have referred to dividing the responsibility for problem-solving between the Community and the Member States. Moreover, from the perspective of the Lisbon Treaty, the need for subsidiarity occurs primarily in the law-making context. Thanks to multilevel governance and the White Paper, the principle is being placed in a wider context and more explicitly meaning involvement of other actors (situated within vertical and horizontal levels) into this process. It underlies the need for an increasing responsibility of regional and local authorities as well as civil society and replacing the "division of powers" by partnership. If appropriate, responsibility may be shared between actors and result in forming structures transcending simple sectoral or territorial dimensions (e.g. National Networks of Rural Areas) (Augustyn, 2009).

2. MLG and the increased role given to the national and sub-national actors in implementing the subsidiarity principle

The new provisions of the Lisbon Treaty will strengthen the democratic accountability of the EU and its institutions by creating new tools of communication and political dialogue. A main contribution is the opportunity to bring the European themes and policies within more dynamic framework of internal debates. This will add legitimacy to interests and preferences of each state from a perspective closer to the citizens. The overall impact will definitely improve the decision-making processes and will ensure a greater transparency and openness of EU activities. Specific consultation procedures can allow the civil society, the local and regional authorities (Mesclier F., 2007: 72) and other interested parties to get involved and express their positions and expectations by using the relationships with the members of the national parliaments. As representative, any member of the parliament can gather those opinions and associate them in relation with the Commission proposals.

The early warning mechanism can also be used as a tool for a better consultation in order to identify specific concerns and expectations of the citizens or local and regional authorities. Arguments and opinions can be gathered and used in order to identify better practices or to simplify certain actions. To this end, the initiative of *Subsidiarity Monitoring Network* shall be promoted as much as possible.

There might be a challenge that a specific proposal can have different interpretations within the national parliaments, based on the differentiation of constitutional order (unitary states versus federal states) with regard to the efficiency of the implementation. Also, there is a risk that some proposals might become reasons for political disputes among different parties, without taking into account the European dimension and implication of a specific proposal (IERS/Dolghi, D., 2009: 30-31).

The Lisbon Treaty brings the EU a step forward in the safeguarding of subsidiarity. The increased role given to the national parliaments in the monitoring of subsidiarity is a positive development. However there is more to be done. The early warning mechanism could work in decentralised countries with bicameral legislature or regional assemblies (although the role of the latter is rather limited); however in more centralised Member States the level closer to the citizen will have to be the national. Concerns about subsidiarity which arise at the regional and local level cannot thus be expressed, especially in the absence of legislative houses consisting of representatives of the regions. This causes an imbalance and could allow unequal enforcement of the principle of subsidiarity among Member States. A possible way to redress that would be to take recourse to the subsidiarity monitoring mechanism of the Committee of the Regions or in fact assign a more muscular role to the Committee of the Regions in the monitoring of subsidiarity (Antonopoulos E., 2009).

The greater weight of the parliamentary component in the EU decision-making system as provided for in the Lisbon Treaty particularly concerns the role of the national parliaments in monitoring the implementation of the subsidiarity principle. In this respect, the regional parliaments in the individual Member States should become more important (Hrbek R., 2009).

According to Paulo Ponzano, the participation of national parliaments to the European decision-making process is an action meant to provide control over the enforcement of the subsidiarity principle (Ponzano, 2009), which shows the way in which the MLG actually functions within the European Union.

The already established participation of regional authorities in the configuration of the Council of the EU is a relevant instrument and recently approved Treaty of Lisbon – Protocol 2 on the application of the principles of subsidiarity and proportionality – goes in the right direction reinforcing the participation (Beltran S., Noferini A., 2009: 4).

According to Paul Furlong “paradoxically, there is a danger of a ‘one size fits all’ approach to subsidiarity; it cannot be imposed from central organisations, therefore it has to grow at the local and regional level Central EU monitoring is not the way forward. Also, the political issues are difficult. Notwithstanding the weight of EU legislation in the framing of national legislative output, the most difficult interface is between the national governments and their local/regional counterparts. This is not a relationship into which the CoR can (or should) readily interpose itself. Subsidiarity is best seen as a matter therefore for Member States primarily” (Furlong P., 2009).

The status of the principle of subsidiarity has been reinforced in the recent treaty amendments, but this is only one side of the coin. Regional and local authorities not only want to *defend* themselves, but, first and foremost, want to *participate* in this intertwined world. They have solid arguments for doing so, referring to the emerging reality of participation in so many policy fields and to numerous new initiatives (Loughlin, 2007).

The White Paper on MLG, drafted by the Committee of the Regions, can therefore build on the experience of the sub-national actors and argue in favour of their systematic participation in all phases of the policy-making process, from the conceptualization to the implementation (Delmartino, 2009).

Summarizing, if the principle of subsidiarity has provided an institutional guarantee to each public actor with regard to its 'core business', MLG has offered a scheme of reference for positioning public and private actors vis-à-vis their crucial role of interacting agents across multiple levels of governance (Delmartino, 2009).

The possibility of *fostering the principles of subsidiarity and of variable geometry to governance, translating them into rules* allows the virtuous coexistence of various models of governance. This could lead to find first-best solutions for each and every country, as well as for territorial aggregations that might arise case per case, while facing specific goals. The adoption of shared rules is necessary. It will be up to these rules to determine rights, duties and freedom, as the success of *MLG* as a concrete tool of European Governments. (Velo F., 2009)

3. Using the MLG, CoR becomes the master of subsidiarity

The subsidiarity principle has been among the political priorities respecting of the CoR, but it has never had the opportunity to prove it from a legal point of view. It has always reclaimed this anomaly and requested to respectfully protect subsidiarity (Theleen, J., 2009: 32). The Lisbon Treaty provides that the CoR can directly inform the Court of Justice for an appeal against violating the subsidiarity principle, particularly in the case of some legislative acts for whose adoption it has to be consulted compulsorily.

Also, another expected result may also be a longer period of time (more than 8 weeks) in which the law propositions are analyzed and amended. A solution would be a well designed e-network that could collect the data and summarize it. This network could be the already existing CoR network which will have to change in accordance to the principle of participation in the decision-making structures of the EU, of each Member State.

As we have seen before, the MLG is based on the subsidiarity principle. Considering that subsidiarity distributes power on different levels for amendment and that coherence between the competences needed for managing a policy, there is a need for political interaction at different levels. Since 2007, the CoR has established the *Subsidiarity Monitoring Network* aiming at concerting and coordinating data referring to the control of subsidiarity principle. This network also aims at facilitating the exchange of information between the EU local and regional communities and the European level relating to different political documents and legislative proposals of the European Commission (Theleen J., 2009: 33).

From this perspective, the CoR is an expertise body, which allows it to be alert and contribute to improving the European legislation. From this perspective, Nicolas Levrat points out that "CoR, by a skilful combination of new requirements requesting the Commission to expand the Lisbon Treaty with the subsidiarity principle to local and regional dimensions on the one hand and to resume the governance principles developed by the Commission in its White Charter 2001 on the other hand, makes a detailed proposal to the European Commission for a new original partnership" (Levrat N., 2009). This partnership would belong to the community initiative (Barbulescu I. Gh., 2008:353). The same Nicolas Levrat notices that "the elaboration of a White Charter by the Committee of the Regions (when this has been practised only by the Commission so far in a community context) is far from being safe" (Levrat N., 2009). The new partnership is to be based on cooperation in monitoring the subsidiarity principle and assessment of the territorial impact of community policies, in one word the impact in MLG. The assessment of the community policies' impact on the MLG once the Lisbon Treaty enters into force becomes one of the subsidiarity elements.

In *conclusion* to the second part of the paper, we can say the following:

First of all, the subsidiarity principle is part of the multilevel governance. The trend is towards 'dynamic subsidiarity', understood as collaboration between different levels of governance in which each participant unit contributes its distinctive expertise and resources to resolve the common problems.

Secondly, according to the subsidiarity principle, the political arenas could easily stay interconnected rather than nested, as stated by a major thesis of the multilevel governance paradigm. In this way, the sub-national actors are allowed to operate simultaneously in both national and supranational arenas without being restricted only to the horizontal level.

Finally, subsidiarity considered through the Lisbon Treaty seems to allow CoR become a genuine community institution, which seems to be a paradox considering that it has been conceived to prevent community institutions from blocking the competences of the Member States. Yet the reading of the White Paper on MLG protects CoR from such a perspective and its subsidiarity cannot be accused of having led to institutionally strengthening the European Union to the detriment of national and sub-national stakeholders.

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