

The EU Harming the Idea of Europe

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The new European Commission is soon to take up office and give life to the Lisbon Treaty, which has just come into effect. Now, finally, this should induce the member states, and with that German politics as a whole, to get down to addressing EU policy with the required depth and seriousness. For it is and remains a fact – which has again recently been proven through an empirical survey conducted by an employee of the Scientific Service of the German Bundestag – that today more than eighty percent of the legal acts valid in Germany are adopted in Brussels. This percentage is not likely to decrease under the Lisbon Treaty.

If we look back at EU policy over the last few years, the results are mixed. Without doubt, the EU can boast considerable success in many areas, for instance with the introduction of the Euro or the further development of the single market. On the other hand, the EU has repeatedly failed to prevail against marked national self-interests where European action would have been required, for example in the consistent development of a common foreign and security policy, the liberalisation of rail transport, the restructuring of the pharmaceutical sector, the establishment of a common market for health services and the freedom of movement for employees from the new member states. Conversely, the EU has interfered in areas in which it has no place, infringed the European division of powers or ignored the principle of subsidiarity, for example by creating the right for self-employed women to claim social benefits, by attempting to regulate occupational pension plans at EU level or with the bizarre idea to have an EU-wide regulation of public transport and speed limits in cities.

Therefore, the EU is now faced with the basic challenge of finding a new balance. In several areas it must gain strength but, at the same time, it must be wary of taking on just any political responsibility. Admittedly, this will be difficult due to the 27 commissioners alone, all of them with their own individual and often competing political interests and all wanting to show results. In addition, the Commission is constantly being influenced by national politicians and associations using the backdoor approach where they have failed to enforce their special interests through national politics. Besides, compromises between the Commission, the European Parliament and the Council on the one hand, and between member states on the other hand are anyway the order of the day in the legislative procedure. Thus, it is not exactly surprising that more regulation than necessary is created in this thicket of interests and that what comes out as a result often fails, not only from an ordoliberal point of view.

However, the difficult conditions under which EU policy operates must not be used as an excuse. On the contrary: anyone who lays claim to political leadership must be able to ward off such attempts and to steer a clear course. For the EU is facing great challenges. Naturally this also applies to the common European foreign and security policy, which, compared with the level of integration that has so far been achieved in the area of economic policy, is still completely underdeveloped.

Yet the greatest challenge for the EU lies elsewhere, and it is an existential one: the EU must regain the acceptance it once had amongst many of its citizens as well as large parts of the economy. For without this acceptance, lasting damage could be caused to people's willingness to agree to the fundamental ideal of European integration, which could have unforeseeable consequences for the EU, including even the risk of failing altogether.

This loss of acceptance is mainly due to the almost ubiquitous impression that Brussels persistently adopts rules over the heads of the people and oblivious to established traditions and cultures, and regulates things which, if at all, could just as well be settled locally or regionally. In order to prevent exactly this development, the principle of subsidiarity was incorporated in the European Treaties. This gives precedence to the member states over the EU in all areas of concurrent legislation ("shared competences"). According to this principle, the EU may take action only if an issue cannot be tackled appropriately at national but solely at European level. According to the hitherto applicable legal position, the main criterion

was the question of whether or not the issue concerned was of cross-border relevance. This should happen as a matter of course anyway.

However, in terms of actual compliance with the thus defined principle of subsidiarity, things do not look good. It already plays a minor role in the awareness of Brussels' politicians, officials and representatives of associations. Those who defend the principle as a supporting pillar of a sustainable European integration policy, generally meet only with pitying smiles. Diametrically opposed to its original intention, today subsidiarity in Brussels is understood as follows: If Brussels gives the money, the issue concerned can be better tackled at EU level. And all too often Brussels is more than willing to spend the money. Against this background, it is all the more disquieting that the criterion for assessing whether or not a cross-border issue is at hand has been deleted by the Lisbon Treaty.

What can be done? Certainly, the European Court of Justice is not likely to address this conflict, for it is in its own interests to support the constant extending of EU competences. The same applies to the European Parliament. Therefore, it is essential that the member states pay considerably more attention – in politics, the public and the media. Member states must set a clear signal that only issues of cross-border relevance may be regulated at EU level.

In the first place, national parliaments must act as watchdogs over the principle of subsidiarity – for Germany that means the *Bundestag* and *Bundesrat* – at the very least because it is in their own interests to maintain their political options to act at national level. However, this will not be easy. In fact, national parliaments are entitled to reprimand infringements of the principle of subsidiarity. Yet it is completely unclear how to do that in view of extremely short periods for objection and the required coordination with other national parliaments. Therefore, highly efficient structures must be established within and between national parliaments so as to facilitate a quick coordination of positions.

No less important is the content positioning: *Bundestag* and *Bundesrat* must, as soon as possible, together with other national parliaments, set a precedence with a concrete EU regulation project and demonstrate their right of reprimand due to a lack of cross-border relevance. This is the only way to compensate for the fact that this criterion is no longer an explicit integral part of the EU statute law.

Secondly, the member states' governments must also act as watchdogs over the principle of subsidiarity, for Germany that would be the *Bundesregierung*. Especially, it has to ensure that the frequently used but highly questionable "backdoor approach" be curbed. It can, for instance, be used by a state ministry to initiate and negotiate in Brussels a national regulatory proposal which, due to political opposition, cannot be pushed through within its own country, thereby by-passing their own national legislative procedure, to finally vote on it themselves in the respective state ministry.

Furthermore, the German *Bundesregierung* must ultimately develop a culture of the categorical "no" regarding negotiation and agreement procedures in the Council of Ministers if projects are affected which do not comply with the principle of subsidiarity or even infringe the European division of powers. There is a lot going wrong here. The latest example is an EU directive granting self-employed (!) women the right to claim state benefits. During the final meeting of the Council of Ministers the German *Bundesregierung* firmly insisted – and rightly so – that there was no legal basis for EU action in that field and that the project constituted an illegal intrusion into national social services schemes. However, during the following voting Germany abstained from voting so as not to inhibit the directive. That was by no means the first time: in Brussels this voting behaviour is called the "German vote".

The current draft directive for an extensive extension of the European legislation on non-discrimination might entail a similar development. According to the Commission, and strongly supported by the European Parliament, shops and restaurants which are not accessible for disabled persons should be rebuilt, regardless of whether this is really needed or not, and tenants should be entitled to demand the rebuilding of flats to become accessible for disabled persons. In the Council of Ministers, the German *Bundesregierung* claimed an infringement of the principle of subsidiarity and took a clear stance against this project. In fact, this is not an issue which cannot be handled at national level, nor is it of any cross-border relevance since buildings simply cannot move from one state to another. The German *Bundesregierung* could put an end to this draft by power of veto, as unanimity is required to pass it. However, this is not likely to happen.

Thirdly, in view of all these conflicts within the German legislature and executive, it is the public and the media who must keep a close eye on politicians. For the strengthening of the principle of subsidiarity is of utmost importance. It must be an unconditional maxim and basis for any decision made in the EU and across all policy areas.

In the light of the principle of subsidiarity, social policy, non-discrimination policy (apart from unequal treatment due to nationality or any related features) and educational policy, to name just three important areas, must be dealt with at national level. All of them lack any direct cross-border relevance.

However, the reality looks different. In addition to quite extensive EU activities in the social and non-discriminatory fields, Brussels, for instance, has – following EU actions in the field of higher education policy

(Bologna process) – recently been initiating efforts to obtain influence also on the general education policy, whereby the comprehensive school concept has clearly won the most favour. If Germany wishes to protect its dual educational system against European standardisation – which might lead to a lower educational standard – it will have to watch out.

As far as EU stability policy is concerned, things look different. In the next five years this will have to play a major role. Since the introduction of the Euro at the very latest, an EU control of budget deficits in member states has been indispensable. For inherent in the monetary union are possibilities and incentives for individual member states to get into excessive debt at the expense of other member states, as the European Central Bank can only take counteract this by means of a standardised monetary policy for all member states. In the course of the financial and economic crisis, all EU States have got themselves into a staggering amount of debt. The EU must now be relentless in pushing them back on course for budgetary consolidation. The fact that the Commission is currently taking very consistent action by instituting proceedings for excessive deficit against 20 out of 27 member states does give reason for hope. However, it remains to be seen whether it will have the political stamina to stay that course.

Aside from stability policy, climate policy will also be of great importance within the coming years. Here, too, the EU is in demand as greenhouse gas emissions simply do not stop at national borders. Of course, not only must its policy be resolute but also consistent. The fundamental decision on EU-wide emissions trading (EU-ETS) is to be welcomed. For the most efficient economic method for inducing both companies and consumers to behave in an environmentally friendly way is to cap CO₂ emissions and to price them. In this way, they are reduced where economic costs are at their lowest. However, in order to be firmly implemented the EU-ETS must apply to all issuers of CO₂, namely to petrol, diesel and heating oil consumption. This is possible with relatively little bureaucracy. Manufacturers and importers of these energy sources must simply be obliged to acquire emission rights (“upstream emissions trading”).

At the same time, the Commission must ensure the abolition of those rules which impede the free flow of EU-ETS. This would include the prohibitions and rules which make it impossible for national economies to reach the prescribed climate protection targets in a cost-efficient manner. One example is the prohibition of light bulbs. It mainly serves the purpose of curtailing the real costs of climate protection for citizens. Not one gram of CO₂ is saved through this prohibition, for emissions created by power generation are capped anyway. Savings in lighting lead to reduced CO₂ emissions on the one hand, but on the other hand, any issued emission rights which are not used for their original purpose are thereafter used for excess emissions in other areas. As a result the permitted CO₂ ceiling is reached anyway. Incidentally, it is exactly rules like the prohibition of light bulbs which contribute to damaging the acceptance of EU policy amongst its citizens.

Moreover, the Commission should urge that an end be put to subsidising renewable energies. For these also cause an unnecessary increase in economic costs for climate policy, by creating incentives for erecting power generation facilities which, without any funding, would have never been built. The renewable energy sector is anyway ahead of competitors due to the fact that no or only a few emission rights must be acquired for it.

Admittedly, EU climate policy is facing a dilemma. The obligation to acquire emissions rights leads to an increase in costs for energy intensive industries and thus substantially impairs the competitiveness of European companies. This can lead to insolvencies or relocations abroad. However, it is not helpful to the climate if, as a result of EU climate policy, production is moved to other parts of the world simply for CO₂ to be emitted there at increased levels. The EU is therefore right in clearly promoting worldwide emissions trading. If this does not come about – which after Copenhagen is very likely – there will be no way of avoiding financial compensation for the unjustifiable additional costs incurred by the companies affected in the EU, even though it is almost impossible to calculate these costs exactly and subsequent problems may arise, such as reduced incentives to invest in low carbon production technologies.

The EU is also required in the area of consumer protection. There are currently 27 different legal systems for consumer protection. This inhibits company willingness to supply consumers in other states and the consumers’ readiness to shop abroad, since they do not know which rights they have there. A full harmonisation of consumer rights would help remedy this situation; it would establish standardised conditions and thus lead to legal security. With minimum harmonisation, however, allowing for upward toleration of national deviations, not much would be gained.

Naturally, full harmonisation must not lead to an overprotection of consumers, for this would not shift the burden from consumers to suppliers. High consumer protection leads inevitably to higher consumer prices, which would mean that the poorer parts of the population especially would consume less. The same holds true for consumer class-action suits.

There is cause for concern regarding the Commission's opinion that consumers are "disoriented" and often do not act according to their "true" interests and therefore must be shown – of course by the EU – the way to happiness; the result of that would be bureaucratic paternalism. The EU should return to the concept of the "well-informed consumer": neutral product information, yes; evaluative statements serving to manipulate certain consumer behaviour, no.

The Commission must also be restrained in their tendency to intervene into the market's price formation process, their ultimate aim being, as they quite openly declare, to establish the political and administrative control of basically all consumer prices. Lately the Commission has been expecting the single market to "deliver socially acceptable outcomes" even at the expense of "economic efficiency". Through surveys and consumer associations the Commission wishes to find out if consumers are "satisfied" with the "market outcomes". If not, it wishes to intervene. It must be urgently warned against the continuation of such a policy, which is reminiscent of the planned economy approach. The political exploitation of price systems damages the ability to communicate scarcity, and thus everyone is harmed, especially the consumer.

Not only in view of harmonised consumer protection will the completion of the single market continue to be a primary goal for the next five years. As the financial and economic crisis has demonstrated, member states still tend to prefer protectionist measures when the fate of national companies is at stake. A strict control of state aid is now more important than ever in order to prevent that tendency from undermining the single market. The Commission must also make every effort to remove any existing barriers. With the Lisbon Treaty it receives the competence to establish a European title to protect intellectual property rights; it should use that competence.

The member states and therefore also Germany's politicians should actively support the European Commission in following this described path. At the same time, however, they should also decisively and publicly counter the inappropriate use of overregulation and infringements of the principle of subsidiarity. German policy will be also judged on its European performance at the next parliamentary election. This should cease to involve mainly pushing projects which cannot be implemented in Germany through the European backdoor, ignoring questionable regulatory proposals from Brussels, or, even worse, waving them through, despite serious concerns. This is not only in the interest of Germany but also in the general interest of the continued prosperity and development of the EU. For European integration is only sustainable if Europe's citizens are included. At the moment we are far away from this, perhaps even further than ever before. And if the people of the EU withdraw their allegiance completely, we could be faced with a shambles of historical proportions.

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