

DECENTRALISATION OF THE STATE IN THE PROCESS OF EUROPEAN INTEGRATION

OPINION

The adoption of the Maastricht treaty offers an opportunity for a fresh look at this issue. The treaty explicitly affirms the subsidiarity principle, first in general^[1], and then with specific reference to relations between the Community and its member states^[2].

The general statement of the principle is very vague, simply stipulating that "decisions are taken as closely as possible to the citizen"^[3]. The legal implications of this are difficult to ascertain, but they do go beyond relations between the Community and its member states, and so affect the distribution of powers within states. It is clear, however, that state structures will not be directly modified or harmonised by this principle. Instead, it should be regarded as a programme provision which is not truly binding, and which governments are largely left to interpret. It should certainly pose no special problems for Italy, which devolves certain powers to the regions without being a federal state, and is therefore an extreme example neither of centralism nor of federalism.

A few remarks on the subsidiarity principle in general may nonetheless be useful. Under this principle, central authorities should have a subsidiary function, performing only those tasks which cannot be performed effectively at a more immediate or local level^[4]. Obviously, opinions regarding the possibility of taking effective action at a lower level are determined by standpoint. While a federalist will assume that most questions can be dealt at a lower level, and give central government only those powers which it really requires, a centralist will regard local authorities as essentially ineffective.

In short, the general rule of subsidiarity proclaimed in the first article of the Maastricht treaty is unlikely to have any real effect on the internal functioning of the member states.

However, the second aspect of the principle, concerning relations between the Community (the Union) and the member states, should have greater practical implications. Two elements are involved. Firstly, in all its areas of activity, "any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty"^[5]. Secondly, in areas which do not fall within its exclusive competence, "the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community"^[6].

The first element is connected with the more general principle that means must be proportional to ends^[7]. This can entail dispensing with legislative action in favour of other instruments, such as mutual recognition, or "diluting" Community legislative intervention by, for example, adopting directives which leave states, and consequently lower level authorities, considerable room for manoeuvre^[8].

The second element, which makes it possible to determine the respective powers of the Community and the member states, applies, according to the Commission, only to areas in which power is shared between the Community and the member states. It does not apply to areas in which the Community has exclusive powers since, by definition, exclusive power rules out any action by member states^[9].

Closer analysis shows, however, that the subsidiarity principle also has a bearing on the area where the Community has exclusive powers, since it serves to define them. According to the Commission, "exclusive powers flowing from an obligation to act are strictly construed ... The exclusiveness of powers is not determined by the matter covered ... but by the imperatives of free movement"^[10]. This principle does not apply to free movement alone, but to all areas in which the Community enjoys exclusive powers. In matters of competition, for example, the Community has exclusive powers only in respect of general rules to ensure equality of all operators in the internal market; in agriculture and fisheries, in respect only of the common organisation of markets and the conservation of fish resources; and in transport, in respect only of the essential elements of transport policy^[11].

Subsidiarity thus appears to constitute a general principle governing the distribution of powers and leaving the Community a hard core of powers, corresponding to the rules needed to achieve its objectives.

All other powers lie with states^[12], which are naturally free to delegate their exercise to lower-level authorities. This is especially important for Italy in fields where the regions have certain powers^[13], such as agriculture, health and hospital care, and vocational and craft training.

Let us take the case of education. The Treaty of Rome contained only one general article on vocational training^[14]. The Maastricht treaty, on the other hand, contains fuller provisions on education and vocational training^[15], and introduces various innovations in the public health field^[16]. At the same time, its affirmation of the subsidiarity principle should prevent extensive centralisation. In addition, the powers of central government are in general likelier to be affected than those of the regions, especially in Italy, where the constitutional rule that regional legislation must not conflict with the national interest^[17], ensures that the regions do not deal with matters requiring national and, a fortiori, Community legislation.

It should also be noted that the subsidiarity principle applies to executive as well as legislative powers^[18].

In conclusion, the subsidiarity principle affirmed in the Maastricht treaty will not affect relations between member states and their subordinate authorities in any concrete sense. It also tends, in spite of everything, to increase the Community's powers - even if these powers are (or remain) shared with the member states - and does not bring "Europe of the regions" any closer^[19]. The role of the regions will therefore continue to depend on national law.

In Italy, special emphasis must be placed on Act No. 86 of 9 March 1989, which specifies the powers of the autonomous Provinces and Regions with regard to the implementation of

Community directives^[20]. This text significantly increases regional entity involvement in the (para-)Community legislative process. In specific cases, however, its actual effect also depends on how detailed the directive in question is.

Outside the Community context, it is worth mentioning for the record the Council of Europe's work on transfrontier co-operation between local and regional authorities, and particularly the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (No. 106), to which Italy is a party. This text encourages regional participation in international relations.

^[1].

Article A, first paragraph, of the Treaty on European Union (hereinafter referred to as TU).

- [2]. Art. B, second paragraph TU, and 3b of the Treaty of Rome as amended by the Treaty on European Union (hereinafter CE).
- [3]. Art. A, first paragraph TU.
- [4]. N.EMILIOU : "Subsidiarity : an effective barrier against 'the Enterprises of Ambition'", *European Law Review*, Vol.17, No. 5 (Oct.1992), pp.383-407, pp.383-384.
- [5]. Art.3b, third paragraph CE.
- [6]. Art. 3b, second paragraph CE.
- [7]. See the European Commission's position on definition and implementation of the subsidiarity principle.
- [8]. Europe documents No. 1804/1805, pp.10-11.
- [9]. *Ibid*, p.9.
- [10]. *Ibid*, p. 8.
- [11]. *Ibid*.
- [12]. Article 3b, first paragraph, CE.
- [13]. Article 117 of the Italian Constitution.
- [14]. Article 128 of the Treaty of Rome.
- [15]. Article 126-127 CE.
- [16]. Article 129, CE.
- [17]. Article 117 of the Italian Constitution.
- [18]. N.EMILIOU, *ELRev.* 1992 pp.400-401.
- [19]. M.JACHTENFUCHS, *Die EG nach Maastricht - Das Subsidiaritätsprinzip und die Zukunft der Integration*, *EuropaArchiv* 1992 pp. 279-287, p.284.
- [20]. See, in particular, Section 9 of Act No. 86/89. In connection with this text, see No. 1/1990 of the *Rivista de diritto europeo*, and in particular the article by Paolo MENGOLZI, *Un nuovo ruolo per le regioni nel processo d'integrazione europea in vista del 1993*, *RDE* 1/1990 pp. 33-38.