

## **EDITORIAL COMMENTS**

### **The subsidiarity principle**

Subsidiarity is undoubtedly one of the most frequently used concepts in the current debate on the institutional development of the European Community. At the same time, it is probably the concept which is least well understood. If fundamental differences of opinion already exist on the familiar term federation, how much greater is the danger of misunderstanding in the case of the term "subsidiarity", which was until recently almost unknown?

Reference was made to the concept of subsidiarity in earlier institutional reforms of the Community. Altiero Spinelli saw the subsidiarity principle as one of the main guarantees of a balanced distribution of legislative competences between Member States and the Community. Article 12 (2) of the draft Treaty on European Union, of which he was the initiator, reads as follows:

"Where this Treaty confers concurrent competence on the Union, the Member States shall continue to act so long as the Union has not legislated. The Union shall only act to carry out those tasks which may be undertaken more effectively in common than by the Member States acting separately, in particular those whose execution requires action by the Union because their dimension or effects extend beyond national frontiers".

The Single European Act, by contrast, applies the subsidiarity principle only in one area, environmental protection, and only in somewhat

modest form. Article 130r (4) states that "the Community shall take action relating to the environment to the extent to which the objectives [assigned to it] can be attained better at Community level than at the level of the Member States".

The fact that the current debate on the subsidiarity principle is very much more far-reaching and politically broader is due to the Commission President, Jacques Delors. His endorsement of the subsidiarity principle was initially a response to the criticism made by the German *Länder* that the Community was interfering without good reason in the legislative rights conferred on them by the German Constitution. A little later, the subsidiarity principle became one of the main arguments against the criticism voiced by the British Prime Minister, Margaret Thatcher, culminating in her Bruges speech in the autumn of 1988. The Delors Report on Economic and Monetary Union, published in April 1989, and its endorsement by the European Council meetings held in Madrid and Strasbourg in June and December 1989 took matters a stage further; they established the subsidiarity principle as one of the fundamental guiding principles of the next reform of the Treaties establishing the Community. This applies (as the most recent discussions in the European Parliament show) not just to economic and monetary union, but also to the steps leading towards political union.

In the discussions between Brussels and the capitals of the "Twelve" the question is usually whether a given matter should be governed by Community or national legislation. It is always implicitly assumed in this respect that governmental rules and regulations are in fact necessary. However, this is by no means always clearly the case. It must first be asked whether a given matter cannot be left to the private sphere *i.e.*, to the individual, the family, firms, trade unions, associations and co-operatives. The subsidiarity principle, correctly understood includes this question, as may be seen from the definition given in the 1931 Papal Encyclical "Quadragesimo Anno", the key passage of which is as follows:

"... just as it is wrong to withdraw from the individual and commit to a group what private enterprise and industry can accomplish, so too it is an injustice, a grave evil and a disturbance of right order, for a larger and higher association to arrogate to itself functions

which can be performed efficiently by smaller and lower societies. This is a fundamental principle of social philosophy, unshaken and unchangeable. Of its very nature the true aim of all social activity should be to help members of the social body, but never to destroy or absorb them”.

Just how important the question of the scope of the private sphere is, is shown by the discussions on the European Social Charter and its incorporation into national or Community law. Jacques Delors has repeatedly emphasised that the subsidiarity principle means that important parts of the Social Charter can be left to the social partners and, to that extent, official rules and regulations (of a national and Community nature) can therefore be dispensed with.

The subsidiarity principle is therefore much wider than is generally supposed. A number of different aspects are involved.

Firstly, there is the differentiation between the private and the official, governmental sphere. The private sphere should be given maximum leeway. Government should interfere only where necessary.

If there is a need for governmental regulatory action, the appropriate level for such action must be determined. Should the action be taken at local, regional or central government level? (This must be decided by each Member State for itself in accordance with national law.) Or, in the light of the Community's objectives and the greater efficiency of rules applying to all the “Twelve”, is action at Community level appropriate?

A question related to but not identical with the previous one is the intensity of the action to be taken, *i.e.*, the problem of how much should be dealt with at the higher level and how much may be left to the lower level. According to the subsidiarity principle, the intensity of action at the Community level should be kept as low as possible, so as to leave a maximum amount of room for manoeuvre to the Member States. Maximum use of the principle of mutual recognition in harmonisation of laws is therefore an expression of the subsidiarity principle as is the reliance on minimum standards (insofar as the principles of the internal market allow this).

Altiero Spinelli's draft Treaty uses the subsidiarity principle as a criterion to demarcate between Community and national action in areas

where concurrent competence is conferred on the Community. The Single European Act does the same, albeit only in relation to environmental protection: environmental protection is one of the concurrent competences conferred on the Community. Any further amendment to the Treaty will probably revert to Spinelli's formulation (or a similar one): all the arguments are in favour of including the subsidiarity principle as a general principle in the Treaty. However, as Spinelli rightly noted, only in areas where there is concurrent competence. Where exclusive competence has been conferred, the subsidiarity principle by definition does not apply: exclusive competence lies either with the Community or with the Member States. This does not of course rule out the possibility of exclusive Community competences exceptionally being conferred on the Member States and vice versa.

Discussions in the months ahead will not of course be limited to the question of whether there should be a general subsidiarity clause and how it should be drafted. The subsidiarity principle will rather be applied in a very much more fundamental way. Such application will not be reflected in a Treaty provision in which criteria are defined for the use of concurrent competences by the Community and the Member States. Rather, the subsidiarity principle will be the key argument governing the allocation of Community competences generally. It will be a recurrent theme in all the discussions on the question of what new tasks the Community must have assigned to it and what tasks can remain with the Member States. What responsibilities should the new European central bank Eurofed assume? Which operations may be left with the central banks of the "Twelve"? Should new legislative competences be conferred on the Community? If so, in what form? As exclusive or concurrent competences? Does the Community need its own subordinate authorities to administer the large internal market (*e.g.*, in the field of competition, health protection, etc.)? Or should the present structure be adhered to?

This brief survey shows that the importance of the current debate on the subsidiarity principle goes well beyond the question of the use of existing or future concurrent Community competences. The discussions on the subsidiarity principle are discussions on the future tasks and responsibilities of the Community in general. That is why they are so important. That is also why it is necessary to follow and to understand them!