PECUCS
Participation of European Citizens in the Union's Climate Strategy

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The principle of subsidiarity

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The principle of subsidiarity

- Within the framework of the Union's non-exclusive competences, the principle of subsidiarity, enshrined in the Treaty on European Union, defines the conditions under which the Union has priority for action over Member States.
- The principle of subsidiarity is defined in Article 5 of the Treaty on European Union.

The principle of subsidiarity

- **Objectives**
- It aims to ensure that decisions are taken as close as possible to the citizen, verifying that the action to be taken at Community level is justified in relation to the possibilities offered by action at national, regional or local level. It also aims to ensure that the action taken at Community level is justified in relation to the possibilities offered by action at national, regional or local level.

The principle of subsidiarity

- **Objectives**
- The principles of subsidiarity and proportionality govern the exercise of the European Union's powers. In areas that do not fall within the exclusive competence of the European Union, the principle of subsidiarity aims to protect the decision-making and action-taking capacity of Member States and to legitimise Union intervention if the objectives of an action cannot be sufficiently achieved by Member States but can, 'by reason of the scale or effects of the action in question', be better achieved at Union level.

The principle of subsidiarity

- **Objectives**
- The inclusion of this principle in the European treaties therefore aims to bring the exercise of powers as close as possible to the citizens, in accordance with the principle of proximity set out in Article 10, n. 3 TEU.

The principle of subsidiarity

- In concrete terms, it is the principle whereby the European Union (EU) does not intervene, except in areas of its exclusive competence, unless its action is considered more effective than that undertaken at national, regional or local level.
- The principle of subsidiarity is closely linked to the principle of proportionality, according to which EU action cannot go beyond what is necessary to achieve the objectives of the Treaties.

The principle of subsidiarity

- **Origin and historical development**
- The principle of subsidiarity was officially enshrined in the Maastricht Treaty, which introduced it into the Treaty establishing the European Community (EC Treaty). However, the Single European Act (1987) had already introduced the rule of subsidiarity in the field of the environment, without expressly mentioning it. The Court of First Instance of the European Communities ruled, in its judgment of 21 February 1995 (T-29/92), that the principle of subsidiarity did not constitute, prior to the entry into force of the Treaty on European Union, a general principle of lawin the light of which the legality of Community acts had to be assessed.

The principle of subsidiarity

- **Origin and historical development**
- Without changing the wording of the reference to the principle of subsidiarity in Article 5, second paragraph (according to the new numbering) of the Treaty establishing the European Community, the Treaty of Amsterdam annexed to the Treaty establishing the European Community a 'Protocol on the application of the principles of subsidiarity and proportionality'. The implementing rules not included in the Treaties but agreed upon in the context of the general approach to the application of the principle of subsidiarity (Edinburgh European Council of 1992) had become legally binding and verifiable.

The principle of subsidiarity

- **Origin and historical development**
- The Treaty of Lisbon enshrined the principle of subsidiarity in Article 5(3) TEU and repealed the corresponding provision of the EC Treaty, while retaining its wording. It also added an explicit reference to the regional and local dimension of the principle of subsidiarity. In addition, the Treaty of Lisbon replaced the 1997 Protocol on the application of the principles of subsidiarity and proportionality with a new protocol bearing the same title (Protocol No 2), whose main innovation concerns the role of national parliaments in monitoring compliance with the principle of subsidiarity.

The principle of subsidiarity

- Two fundamental protocols are annexed to the Treaty of Lisbon:
- **Protocol No. 1** on the role of national parliaments, which encourages the involvement of national parliaments in EU activities and requires that EU documents and proposals be forwarded to them in good time so that they can examine them before the Council adopts a decision;

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- **Protocol No. 2**, which requires the Commission to take into account the regional and local dimension of all draft legislative act sand to make a detailed statement on how the principle of subsidiarity is being respected. The protocol allows national parliaments to send an opinion if they consider that the draft legislative act does not comply with the principle. In such cases, the proposal must be reviewed and may be maintained, amended or withdrawn by the Commission, or blocked by the European Parliament or the Council.

The principle of subsidiarity

- The general meaning and purpose of the principle of subsidiarity lies in recognising a certain independence fora subordinate authority in relation to a higher authority, notably for a local authority in relation to a central authority. It is therefore a question of dividing powers between the different levels of authority, a principle that forms the institutional basis of federal states.

The principle of subsidiarity

- Applied to the European Union framework, the principle of subsidiarity serves as a regulatory criterion for the exercise of the Union's non-exclusive competences. The principle of subsidiarity excludes Union intervention when a matter can be effectively regulated by Member States at central, regional or local level, and instead legitimises the Union to exercise its powers when Member States are unable to achieve the objectives of a planned action to a satisfactory extent and when intervention at Union level can bring added value.

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- In accordance with Article 5, n. 3 TEU, action by the Union institutions under the principle of subsidiarity requires that three conditions be met:
- it must not be a matter for which the Union has exclusive competence(non-exclusive competence);
- the objectives of the proposed action cannot be sufficiently achieved by the Member States (necessity);
- the action can, by reason of its scale or effects, be better achieved at Union level (added value).

The principle of subsidiarity

- **Scope of application**
- The principle of subsidiarity applies to areas where the Union has non-exclusive competences that overlap with those of the Member States. The entry into force of the Treaty of Lisbon established amore precise delimitation of the competences conferred on the Union. In fact, Part One, Title I, of the Treaty on the Functioning of the European Union (TFEU) classifies the Union's competences into three categories (exclusive competences, shared competences and supporting competences) and identifies the areas that fall within the three categories of competences.

The principle of subsidiarity

- In environmental matters it is clear the need for a cross-border and supranational intervention.
- The EU has used the principle as a leverage to attract the legislative competence to fulfil the ambitious objectives that could not be adequately acheived.

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- **Scope of application**
- Recipients of the principle of subsidiarity
- With the introduction of an explicit reference to the sub-national dimension of the principle of subsidiarity, the Treaty of Lisbon also strengthens the role of the Committee of the Regions and opens up a possibility, left to the discretion of national parliaments, for the participation of regional parliaments with legislative powers in the ex ante "early warning" mechanism.

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- **Control by national parliaments**
- In accordance with Article 5, n. 3, second subparagraph, and Article 12 (b) TEU, national parliaments shall monitor compliance with the principle of subsidiarity in accordance with the procedure laid down in Protocol No 2. Under this procedure (ex ante "early warning"), any national parliament or any chamber of such a parliament may, within eight weeks of the date of transmission of a draft legislative act, send to the Presidents of the European Parliament, Council and the Commission a reasoned opinion setting out the reasons why it considers that the draft in question does not comply with the principle of subsidiarity.

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- **Control by national parliaments**
- If the reasoned opinions represent at least one third of the total votes allocated to national parliaments (one vote per chamber in bicameral parliaments and two votes in unicameral parliaments), the draft must be re-examined ('yellow card').The institution that submitted the draft legislative act The institution that submitted the draft legislative act may decide to maintain the draft, amend it or with draw it, giving reasons for its decision.

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- **Control by national parliaments**
- With regard to draft acts relating to police cooperation or judicial cooperation in criminal matters, this threshold is lowered (one quarter of the votes).
- If, in the ordinary legislative procedure, at least simple majority of the votes allocated to the national parliaments, under the ordinary legislative procedure, at least simple majority of the votes allocated to the national parliaments contest the conformity of a legislative proposal with the principle of subsidiarity and the Commission decides to maintain the proposal, the matter is referred back to the legislator (European Parliament and Council), which takes a decision at first reading.

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- **Control by national parliaments**
- If the legislator considers that the legislative proposal is not compatible with the principle of subsidiarity, it may reject it by a majority of 55% of the members of the Council or by a majority of the votes cast in the European Parliament ('orange card').

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- **Control by national parliaments**
- To date, the ‘yellow card’ procedure has been initiated three times, while the ‘orange card’ procedure has never been used. In May 2012, for the first time, a “yellow card” was issued in relation to the Commission's proposed regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services(“Monti II”).

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- **Control by national parliaments**
- Twelve national parliaments/chambers of such parliaments out of 40 considered that the proposal did not comply with the principle of subsidiarity in terms of its content. The Commission decided to withdraw the proposal, even though it considered that it did not violate the principle of subsidiarity. In October 2013,another “yellow card” was issued by 14 chambers of national parliaments in 11 Member States regarding the proposal for a regulation establishing the European Public Prosecutor's Office.

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- **Control by national parliaments**
- After analysing the reasoned opinions received from national parliaments, the Commission decided to maintain the proposal. After analysing the reasoned opinions received from national parliaments, the Commission decided to maintain the proposal, specifying that it complied with the principle of subsidiarity. In May 2016, a third "yellow card" was issued by 14 chambers in 11 Member States against the proposal to revise the Posting of Workers Directive. The Commission provided extensive reasons for The Commission provided extensive reasons for maintaining the proposal, considering that it did not violate the principle of subsidiarity, as the issue of the posting of workers is by definition cross-border.

The principle of subsidiarity

- **Judicial review**
- Compliance with the principle of subsidiarity is subject to ex post review (after the adoption of the legislative act)through judicial review by the Court of Justice of the European Union, as also specified in the Protocol. However, the implementation of this principle gives the Union institutions a wide margin of discretion.

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- **Judicial review**
- in its judgments in Cases C-84/94 and C-233/94, the Court ruled that compliance with the principle of subsidiarity is one of the circumstances subject to the obligation to state reasons under Article 296 TFEU. This obligation is already satisfied when compliance with the principle is apparent from the recitals and has been taken into account in the examination of the act. The Court has also held that the principle of proportionality must be taken into account in the examination of the act. This obligation is already satisfied when compliance with the principle is apparent from the recitals as a whole and has been taken into account in the examination of the act.

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- **Judicial review**
- In a more recent judgment (Case C-547/14, Philips Morris, paragraph 218), the Court reiterated that it must verify 'whether the EU legislature could reasonably consider, on the basis of detailed evidence, that the objective pursued by the measure in question could be better achieved at EU level'. With regard to procedural guarantees and, in particular, the obligation to state reasons in relation to subsidiarity, the Court recalled that compliance with that obligation 'must be assessed not only in relation to the text of the contested measure, but also to its context and the circumstances of the case' (paragraph 225).