

Regional participation in the EU's decision making process has increased significantly. But we are still far from a 'Europe of the Regions'.

by Blog Admin

In its early days, the European Union had a tendency towards 'regional blindness', with there being little representation for sub-state entities at EU-level. Nikos Skoutaris finds that with the growth of regionalization, federalization and devolution in countries like Italy, Belgium and the UK, the EU has gradually changed its own constitutional arrangements to allow some regions to play a greater part in the EU's decision making processes.



In June 2008, the Finnish Parliament approved the text of the Lisbon Treaty. Three months later, the formal ratification of the Treaty was finalised with the signature of the President of the Republic of Finland, Tarja Halonen. However, it was only on 25 November 2009 – a week before the Treaty came into force – that the Parliament of the Åland Islands, an autonomous region of Finland, decided with a majority of 24 to 6 that the Treaty would also apply there. In fact, during the previous months, the Åland Government had put forward four requests that had to be resolved before accepting the Treaty. The autonomous region had requested its own seat in the European Parliament; a right to appear before the Court of Justice; participation in the control of the principle of subsidiarity (i.e. whether or not actions should be taken by the EU or member states or regions); and participation in the meetings of the Council. All the requests were satisfied except the seat in the Parliament. The aforementioned largely unknown episode in the Lisbon Treaty ratification saga sheds light on the efforts of a number of sub-State entities to achieve an enhanced role in the Union decision-making processes.

Notwithstanding the aspirations of the sub-state entities concerning their role in the EU political and legal order, the academic literature has suggested since the early days of the integration process that the Union is 'blind' to the internal territorial and constitutional arrangements of its Member States. Arguably, the original indifference of the then Community to the regional tier can be traced back to the constitutional structure of the founding Member States. During those early days, the then European Economic Community was largely comprised of unitary States in the centralised, 'Jacobin' sense with the exception of federal Germany and Italy, which were regionalised in part. In the years to come, however, the gradual federalisation of Belgium, the further regionalisation of Italy, the accession of States with regional tier with legislative competences such as Spain, Portugal, Austria, Finland and the devolution process in the UK has significantly altered the European constitutional landscape.

In response to those political developments, the EU's constitutional order did change to an extent that speaking of 'regional blindness' does not do justice any more to the complexity of the institutional framework in place. For instance, Article 16(2) TEU provides that '[t]he Council shall consist of a representative of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote.' It is not prescribed to which internal level of the government that representative shall belong. Thus, even Ministers from regional governments are allowed to represent their Member States if the internal constitution so provides. Moreover, Article 4(2) TEU now states that '[t]he Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, *inclusive of regional and local self-government*'. In addition, according to article 5(3) TEU, which provides for the new formulation of the principle of subsidiarity, the Union – outside the areas of its exclusive competence – may only act 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 level*'. At the same time, the review of recent case law of the European Court of Justice demonstrates that the Luxembourg Court is ready to recognise the constitutional autonomy of certain regions to exercise policy choices that differ from the ones of the relevant State or of

the other regions and thereby has become more mindful of the regional dimension of the Union structure. The judgments in *Portugal v Commission* in *Unión General de Trabajadores de La Rioja* and in *Horvath* provide some evidence of this point.

More importantly, the participatory rights of sub-state entities in the EU's decision-making processes have been further strengthened through certain national constitutional law arrangements – which proves emphatically the intertwined and composite nature of the European constitution. The German and Austrian Bundesräte, the Belgian, Italian and UK joined ministerial committees and the Spanish sectoral conferences are some of the national institutions that allow the sub-state tier to participate in the EU's legal and political order. Equally, the participation of the regions to Union institutions such as the Council and the Committee of the Regions, as provided by national law together with the new opportunities that the Early Warning System creates, prove beyond reasonable doubt that the channels for regional participation within the EU's decision making processes have increased significantly.

Having said that, one has to admit that despite these developments, we are still far from the enthusiastic vision of a '*Europe of the Regions*' described in the 1990s. For most channels of participation, it is only a small number of regional authorities that benefit from the relevant arrangements. Still most of the EU Member States do not have a regional tier with legislative powers. This is why it may be more accurate to speak about the gradual emergence of a '*Europe with certain Regions*', the regions with legislative power.

This article is a summary of Nikos Skoutaris' article in E Cloots, G De Baere and S Sottiaux (eds), [Federalism in the European Union](#) (Oxford, Hart Publishing 2012) .

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