

Subsidiarity as a weapon against Euroscepticism

It is a great honour for me to be able to award the Montesquieu Institute's prizes under the watchful eyes of King William the II.

As many of you will know, King William assisted in the victory of Wellington over Napoleon in the battle of Waterloo. His exact role in this event remains unclear, some historians have serious doubts if he was ever involved in serious battle, but in any case he returned home with an injury. That injury alone justified his title of honour of 'Hero of Waterloo'.

King William was not only a hero, but definitely also a true European. Born in a mixed marriage, raised in England and Germany, married to a Russian princess, and working in Germany, Spain and the Netherlands. In the beginning of the 19th century no extensive *acquis communautaire* was needed for such a level of European integration.

I should like to discuss with you today this *acquis communautaire*. It is definitely not a popular subject in this country; in the campaign for the elections of the European Parliament none of the parties embraced this visible result of European integration. The tenth of thousands of pages of legislation is rather a subject for mockery, dismay, and even outright hostility towards Europe. The call for reduction and simplification of legislation is widely supported.

Reducing the *acquis*, however, is no simple task. The European Commission has made a serious attempt in its so-called 'better regulation' programme. It has analysed many of the existing regulations and has made proposals to actually reduce the *acquis* by almost 10%, which represents 1300 legal acts, or 7.800 pages of the OJ.

In doing so, however, it found that practically all existing legislation has staunch supporters, vested interest groups that are ready to fight for maintaining the existing *acquis* in their area and able to convince one, or the other Member States of the undisputed value of just that piece of Community law. Hence, the Commission effort to reduce the *acquis* meets with severe opposition and the actual effect may be considerably less than what has been proposed.

Commission efforts to *simplify* legislation meet a similar fate. Simplification often leads to a larger margin for interpretation and therefore uncertainty about the uniform application of legislation. Since Member States have a healthy distrust in each other when it comes to the strict application of Community law,

they rather live with detailed Regulations, than risking to become 'gekke Henkie', the only one that applies the rules correctly. Particularly in the Netherlands this fear is deeply rooted, and as a consequence the Dutch negotiators in the Council working groups and in Parliament are experts in detailing legislation.

Therefore, neither the reduction of the *acquis*, nor its simplification can easily be done, but progress is being made and some tangible results have been achieved.

Unfortunately these efforts are unlikely to lead to less European legislation, since the same politicians that call for less legislation, also find the EU not active enough in combating the financial crisis, they call for more European action to protect our environment and fight climate change, they would like to see more common action to avoid illegal immigration and they call for a common energy policy. Obviously these ambitions can only be realised by adding to the *acquis communautaire*.

Therefore, the body of European rules is likely to increase, whether we like it or not. That increase will have to be justified towards the critical citizen who is far from convinced that more Europe is needed in his life.

The electoral campaign we have just witnessed has been a disaster from this perspective. Rather than explain that more European cooperation is required to deal with these highly complex and urgent matters, most parties called for 'less Europe'.

It would have been more honest to promise the voter that the rules of subsidiarity and proportionality will be strictly applied, but that this will not avoid that the EU will continue to expand and integrate in order to meet the future challenges.

This brings me to the very difficult issue of subsidiarity: 'unless there is exclusive competence, the EU shall only act insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, but can rather be better achieved at Community level'.

In my view this principle provides us with *the best possible* tool to win back the support from citizens for new European legislation. If it can be demonstrated to the citizen that a certain measure is necessary and that, on balance, the goal can best be achieved by European legislation, rather than by 27 national laws, or by provincial, or local action, Europe can hardly be blamed for being too power hungry.

If, on top of that, the subsidiarity testing is left to national parliaments each with their own share of eurosceptics, and if these national politicians are ready to defend their decisions publicly, then we may be able to create the necessary public basis for expanding the *acquis communautaire* in the areas where that is needed.

This approach may be sound in theory; the practice is rather thorny, as the Dutch experience can show us.

Let me first say, in this chamber, that the Dutch Parliament and its Senate in particular is showing a keen interest in European legislation and has understood early on that an active involvement of national parliaments is essential for the acceptance of that legislation by society.

On the issue of subsidiarity the Dutch Parliament also plays an active role and submits a considerable number of proposed measures to rigorous subsidiarity testing.

Still, we can identify some problems:

First of all, the success rate in finding Commission proposals that do not pass the test is not really impressive. Out of the approx. 400 proposals made per year by the Commission, only 4 proposals meet with objection on this basis. The reason is, of course, that also the European Commission is well aware of the reluctance of Member States and the European Parliament to adopt new legislation. Clearly it does not want to see its proposals returned by the other institutions and therefore it has introduced a careful analysis of subsidiarity and proportionality, but also of the impact of the proposed measures on society and of the cost of implementation, before a proposal even reaches the Commission for decision. I can assure you that my colleagues in the so-called Impact Assessment board are very strict.

Second, the division of tasks between the Chamber of Deputies, or second chamber, and the Senate is difficult. Initially the two chambers combined forces on an experimental basis in the Joint Committee on Subsidiarity, but they decided not to prolong that experiment and to each go their own way.

This has created the interesting situation that my Commissioner Margot Walstrom received a letter on 10 February last from the chairwoman of the Senate, Mrs Timmerman - Buck indicating that a Commission proposal on energy consumption of building did meet the subsidiarity test, while two days later, on 12 February, Mrs Verbeet the chairwoman of the Second Chamber wrote to Mrs Walstrom that the very same proposal did *not* meet that test.

Somewhat confusing for Mrs Walstrom, but I should add that also Mrs Timmerman - Buck has concluded that this situation cannot continue. A few days ago she has written a letter to her colleague from across the Binnenhof with a procedural proposal on how to better separate the roles of the two chambers in European matters. I trust that an agreement can be reached.

The third problem we have is that the Commission cannot adequately deal with the situation.

The Commission is quite happy to send all its proposals, after adoption, to the national parliaments. It is also happy to receive letters back indicating that this or the other national parliament considers that the proposal is not conform subsidiarity, such as the one from Mrs Verbeet, but from there on it gets messy.

Since the Commission itself has carefully analysed if the proposal meets the subsidiarity test and since it has concluded that it does, it can only respond to objections from national parliament by explaining why it considers that indeed the goal can best be achieved by European legislation, rather than by 27 national laws.

It is highly unsatisfactory for national parliaments if they spend a lot of time and effort analysing the Commission proposals and if they take the trouble of informing the Commission of their views if they then always get the same reply. Of course this is all done very politely and with substantive argumentation, but still, in essence it says 'Thank you very much, but we see it differently'.

As we all know, the Lisbon Treaty will strengthen the role of national parliaments in the application of the principles of subsidiarity and proportionality. If a majority of Parliaments consider that the Commission proposal does not meet the subsidiarity test, the Commission must review its proposal.

This now puts the onus away from the Commission and in the hands of the national parliaments themselves. If they are unhappy with a Commission proposal, they will have to convince their colleagues in other Member States of their point of view. If they have good arguments, surely they will be able to convince the other parliaments. If not, it is not bureaucrats or non-elected officials, but elected MPs that have decided on the need for new Community law

However, it will not be easy. As said, Commission proposals are already carefully considered before they are put forward; in most cases the proposals

will meet a clear need or requirement and finally; the roles of national parliaments vary considerably when it comes to European legislation.

Still, it is a lot better than the situation we have today. The Dutch parliament is actively preparing the ground for a more active role for national parliaments in the framework of COSAC, the cooperation of national parliaments dealing with European Affairs, and I can only hope that they are successful.

An active role for national parliaments may help to create the necessary public support for new European legislation:

- Without it, we risk to lose the confidence of the citizens,
- With it we can hope that national politicians will take their responsibility and defend the expansion of the *acquis communautaire* against a sceptical public, because that is what has been democratically decided.

King William 2nd was initially not very popular among the Dutch citizen. He was well aware of that and overnight he decided to change from being a conservative to becoming a liberal and to accept a written constitution for the Netherlands. This improved his popularity substantially and ultimately he even became the hero of Waterloo. Perhaps the adoption of the Lisbon Treaty will do the same for European popularity.

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18.6.2009