The importance of local and regional self-governance to protect national identity

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The importance of local and regional self-governance to protect national identity
Article 4(2) TEU

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8.1. The evolution of the national identity clause

This paper aims to link the notion of national identity with the role of regional, and more in general local, self-governance entities focusing on the Treaty evolution, the doctrine of 'counter limits', the leading interpretative role of the Court of Justice of the European Union (CJEU) and the latest developments based on Conference on the Future of the EU.

First of all we need to remember that the concept of national identity is a relatively new principle that was not included in the original founding treaties: in fact it ap-

peared for the first time as a general provision in the text approved at Maastricht and precisely in the newly introduced article F of the Treaty of the European Union that set an obligation for the EU to respects national identities of Member States.

This general provision had no specific nor direct effect but it can be considered the first step towards the need to protect national identities with their specificities. It is not accidental that at the same time the Committee of the Regions, an EU advisory body that has been later recognized more relevant roles as we will see, was also set up and that the principle of subsidiarity was introduced[1]. It is relevant to note that the inclusion of the principle of subsidiarity is largely explained by the previous debate and preparatory work and precisely by a request from the German Länder, which had particularly insisted on this need to introduce in European Union law a specific provision in order to prevent EU law being used to remove competences not only from Member States but more specifically from local bodies.

Moreover, from the entry into force of the Treaty of Maastricht the EU decision-making process started to take into account regional interests also by giving the possibility for the national representatives in the Council to stem from a regional government as it may be appropriate for a representative in the Council to be able to have a specific knowledge and competence regarding local or regional interests[2].

We can therefore declare that the introduction of the concept of national identity goes in parallel with an opening by the European Union to involvement of Regions in its architectural framework.

In the successive developments of the structure of the European Union, made through the Treaty of Amsterdam and the Treaty of Nice, however, this new trend was somewhat lost and no significant changes where introduced to preserve or reinforce this aims.

** Paragraphs 1 and 3 are attributed to Elisabetta Bergamini, paragraphs 2 and 4 are attributed to Marta Ferrari, the final remarks are to be considered as a joined work.*

1 On the principle of subsidiarity for an overview of the literature see F. Fabbrini, 'The Principle of Subsidiarity', in R. Schütze, T. Tridimas (ed. by), Oxford Principles Of European Union Law: The European Union Legal Order: Volume I, Oxford University Press, United Kingdom, 2018 and on its introduction see A. Estella De Noriega, The EU principle of subsidiarity and its critique, Oxford University Press, Oxford, 2002. On its evolution see also R. Schütze, Subsidiarity after Lisbon: Reinforcing the Safeguards of Federalism?, in «The Cambridge Law Journal», LXVIII, n° 3, 2009, pp. 525-536.

2 On the principle of national identity see A. von Bogdandy, S. Schill, Overcoming absolute primacy: respect for national identity under the Lisbon Treaty, in «Common Market Law Review», XLVIII, n° 1, 2011. See also B. Guastaferro, Il rispetto delle identità nazionali nel Trattato di Lisbona: tra riserva di competenze statali e «controlimiti europeizzati», in «Quaderni Costituzionali», I, 2012, pp. 152-154.

It was only thanks to the work of the European Convention, which went on to draw up the proposal for a Treaty establishing a Constitution for Europe, and in particular thanks to its Working group V, that the idea to propose a new modified and extended clause on national identity was considered in order to clarify that the of protection national identity shall involve multiple factors. The new draft clause provided that «National identity [was to] include, among others, fundamental structures and essential functions of the Member States notably their political and constitutional structure, including regional and local self-government; their choices regarding language; national citizenship; territory; legal status of churches and religious societies; national defence and the organisation of armed forces».

Unfortunately not all the detailed suggestions of the working group were introduced in the draft Constitutional Treaty (that, as we know, was never to enter into force) and only the part relating to the regional and local authorities was actually included in the final text, a choice that was later respected and confirmed by the Lisbon Treaty, (the one currently in force), born from the ashes of the abandoned «European Constitution».

In fact, in the Treaty of Lisbon, the current wording of article 4(2) TEU[3], states precisely that the European 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», managing to maintain the reference to local situations that was proposed in the draft «Constitution for Europe».

Furthermore, since the entry into force of the Treaty of Lisbon, the reference to regions is no longer limited to cohesion policy (article 3(3) TEU) as it previously happened: the need for them and for other local authorities to be involved in the EU integration process (and not only in the national legal framework) is now taken into account in various parts of the Treaties.

However there are still some open questions: does this reference to the regional

3 For comments on this article see B. Guastaferro, 'Sincere Cooperation and Respect for National Identities', in R. Schütze, T. Tridimas (ed. by), cit., pp. 350-382. A. Schnettger, Article 4(2) TEU as a Vehicle for National Constitutional Identity in the Shared European Legal System, in C. Calliess, G. van der Schyff (ed. by), Constitutional Identity in a Europe of Multilevel Constitutionalism, Cambridge University Press, Cambridge, 2019, pp. 9-38, and, in the same volume, the contribution of G. van der Schyff, Member States of the European Union, Constitutions, and Identity, A Comparative Perspective, pp. 305-347; A. Kaczorowska-Ireland, What Is the European Union required to Respect under Article 4(2) TEU?: The Uniqueness Approach, in «European Public Law», XXV, n° 1, 2019, pp. 57-82. More recently see also the contributions in J. de Poorter, G. van der Schyff, M. Stremler, M. De Visser, I. Leijten, C. van Oirsouw (ed. by), European Yearbook of Constitutional Law 2022, A Constitutional Identity for the EU?, Springer Link, The Hague, 2023.

and local dimension mean that regions and local entities can be recognised a role independently from the one of the States or is it a mere acknowledgement of the existence of sub-national entities as part of the constitutional structures of the Member States themselves?

Even though the EU cannot interfere with Member States' «fundamental structures, political and constitutional, inclusive of regional and local self-government», according to article 4(2) TEU, the EU cannot be indifferent to the request made by regions and local entities to play a relevant role in the application and implementation of EU law. In fact correct implementation of EU law is often a responsibility of local entities.

The Lisbon Treaty had a relevant impact in recognizing a new more relevant role to regional and local entities not only regarding the new wording of the subsidiarity principle but also in many different parts.

First of all the territorial cohesion principle, that is one of the objectives of the EU, is an indirect way to recognize relevance to regions and local bodies, but also article 10(3) TEU is relevant in the part in which it says that decisions «shall be taken as openly and as closely as possible to citizens'»: in order for this principle to be respected we need to enhance the activities of local authorities.

A new role is also recognized in the pre-legislative consultation phase, as the Commission is now expected to take into account in that phase the regional and local dimension as well: this means that there will be an involvement not only in the implementation phase, but also in the ascending phase of creation of EU law.

Furthermore, regional parliaments with legislative powers must be consulted by national parliaments, therefore, an «Early Warning System» was introduced to ensure the involvement of national parliaments in the drafting of acts attributing them also the role of consulting local legislative assemblies.

Last but not least the Committee of the Regions was also recognized a new relevant attribution hitherto denied: being given the possibility to bring actions for annulment against acts of European Union law when the Committee of the Regions consideres that the said acts undermine their prerogatives.

8.2. The European Union with regions and local authorities in the Treaties: the doctrine of 'counter-limits'

As outlined above, the national identity clause was first recognised in the European legal system when the Maastricht Treaty came into force. The final version, however, was drawn up with the Treaty of Lisbon, and was definitively included under article 4(2) TEU. The current provision is expressed in the following terms: *«The 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.»*

Looking at the history of this provision, its inclusion was initially intended to make up for the fact that an ad hoc provision regarding Member States' exclusive competences had not been included in the Treaties. It therefore did not originate as a qualitative parameter of the European Union's law-making power in order to limit the primacy of EU law. It should be noted, however, that the originally intended outcome has in any case been achieved with the current wording: the reference to respecting national identities is intended to exclude what are considered Member States' essential functions from the EU action[4].

The national identity clause constitutes the means by which individual Member States can maintain their own distinguishing characteristics and features within the European Union. In this respect, ever since this provision was first included, Member States' Constitutional Courts have been active in implementing it in order to defend the supreme values and principles of their legal systems, thereby initiating a dialogue between national courts and the Court of Justice that is still ongoing[5].

By virtue of article 4(2) TEU, the Union is obliged to respect Member States' national identities. In this way, the counter-limits no longer constitute an external limit to the EU's regulatory action, but rather an internal as well as a relative one. A relative limit in the sense that a Member State's legitimate interest in having its

4 C. Matusescu, Exercise of Competences in The European Union - Between the Loyalty Clause and The Clause on Respecting The National Identity Of The Member States. Some Reflections, in Supplement of Valahia University Law Study, Editura Bibliotheca, Târgoviște, 2017, p. 32 ff.; B. Guastaferro, Il rispetto delle identità nazionali nel Trattato di Lisbona: tra riserva di competenze statali e «controlimiti europeizzati», cit., p. 153 ff.

5 Despite an initial reluctance, the highest national Courts have progressively accepted dialogue with the Court of Justice as guarantors of national identity of their States of origin. In particular, Italian Constitutional Courts and Federal Constitutional Court of Germany were the main actors involved supporting a conflicting opinion. The new trend in the use of article 4(2) TEU was launched with cases Gauweiler (CJEU, 16 June 2015, case C 62/14, ECLI:EU:C:2015:400) and M.A.S. and M.B (CJEU, 5 December 2017, case C 42/17, ECLI:EU:C:2017:936); for more details see G. Di Federico, The Potential of Article 4(2) TEU in the Solution of Constitutional Clashed Based on Alleged Violations of National Identity and the Quest for Adequate (Judicial) Standards, in «European Public Law», XXV, n° 3, 2019, p. 349 ff.

identity protected is likely to be balanced within the European legal system with other equally worthy interests[6].

National identity thus becomes a concept of European Union law on which the Court of Justice is called upon to give an autonomous interpretation. In this regard, it should be noted that the Court has not yet provided a comprehensive doctrine on this point.

Several authors have devoted their efforts to addressing this gap and the most widely accepted theory among legal scholars links the notion of 'national identity' to each State's 'constitutional identity'. In the light of this interpretation, article 4(2) TEU therefore requires the European Union to respect Member States' 'fundamental constitutional structures'[7].

Within the concept of 'fundamental constitutional structures', the European legislator has also included regions and local authorities as components of national identity that the EU is obliged to respect[8]. The inclusion of regional and local self-government in Article 4(2) TEU therefore leads to the assertion that not only does the EU legal order recognise this within Member States' legal systems but even deems it to be part of the EU's own multi-level system[9].

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6 D. Kabt-Rudnicka, National Identity as a Useful Tool for Setting Limits to European Integration, in «International Relations and Diplomacy», VI, n° 3, 2018. p. 144 ff.

7 See, D. Kabt-Rudnicka, National Identity as a Useful, cit., p. 145 ff.; L. S. Rossi, The Principle of Equality Among Member States of the European Union, in L. S. Rossi, F. Casolari (ed. by), The Principle of Equality in EU Law, Springer, 2017, Cham, p. 29; M. Kos, The Relevance of National Identity in European Union Law and Its Potential for Instrumentalisation, in «Zbornik Znanstvenih Razprav», LXXIX, 2019, p. 42 ff.. With regard to this point, some authors push for a broader understanding of the 'national identity' clause, see also O. Chessa, Meglio tardi che mai, La dogmatica dei controlimiti e il caso Taricco, in «Forum di Quaderni Costituzionali», 2016, p. 21 ff. In the author's view, pursuant to the provision under examination, the Union is called upon to respect not only the key aspects of a Member State's political and organisational structure, but also those that are not fundamental in nature, thus limiting the Union's power of manoeuvre. Other authors have instead questioned the relationship between article 6(3) TEU and article 4(2) TEU, see also L. S. Rossi, Come Risolvere La «Questione Taricco» … Senza Far Leva Sull'art. 4, Par. 2, TUE, in «SIDIBlog», 2017, Member States' fundamental structures, inherent in their fundamental organisation, must not be understood to also be inclusive of the States' fundamental rights, which instead fall under the scope of article 6(3) TEU. These are therefore complementary regulations applicable to distinct situations. Article 6(3) TEU refers to Member States' fundamental rights and freedoms as they result «from the constitutional traditions common to the Member States» and that form part of the Union's law as general principles. Article 4(2) TEU, on the other hand, is aimed at respecting Member States' national identities, inherent «in their fundamental structures, political and constitutional», including also regional and local self-government.

8 L. Corrias, National Identity and European Integration: The Unbearable Light-ness of Legal Tradition, in «European Papers», I, n° 2, 2016, pp. 386-387; C. Panara, The Contribution of Local and Regional Authorities to a «Good» System of Governance within the EU, in «Maastricht Journal of European and Comparative Law», XXIII, n° 4, 2016, p. 616 ff.; Opinion of Advocate General Trstenjak, delivered on 4 June 2008, Coditel Brabant, case C 324/07, ECLI:EU:C:2008:317, para. 85: «The right to municipal self-government is not reflected only in the legal provisions of the Member States but, as the German Government correctly pointed out, also in the European Charter on Local Self-Government drawn up within the framework of the Council of Europe signed by all EU Member States and also ratified by most of them.».

9 I., Pernice, The Treaty of Lisbon: Multilevel Constitutionalism in Action, in «The Columbia Journal of European Law», XV, n° 3, 2009, p. 394.

Recognition that regional and local self-government in Member States is a key element of their national identity is not new. This position is perfectly in line with most Member States' national fundamental charters, which state that regional and local authorities form an integral part of their 'constitutional identity'.

Acknowledging this, it follows that any potential legislative action that affects, or even removes, the functions attributed to regional and local authorities by Member States' fundamental charters necessarily requires a process to revise said States' constitutional provisions and their very 'constitutional identity'[10].

It is therefore legitimate for Member States to confer competences upon the EU as long as this respects the provision of article 4(2) TEU also with regard to the areas falling under the responsibility of regional and local authorities. However, should EU legislation have the effect of limiting regional and local authorities' fundamental tasks and values, or even lead to them being removed, then the clause could be triggered in order to protect the State's fundamental structure, thereby preventing the primacy of EU law over national law being asserted.

The 'counter-limits' doctrine is therefore a strategy to ensure peaceful coexistence between regional and local authorities' key roles and characteristics on the one hand and the steady expansion of the European Union's competences on the other.

Although, to date, the Court of Justice has ruled exclusively in favour of preserving Member States' national identities, with the intention of safeguarding their specific national features and characteristics, it is possible that, in the future, it may act to protect the values of local and regional authorities, again by using the provision of article 4(2) TEU. The 'counter-limits' provision could therefore go from being a concept limited to the defence of national identity in the overall sense, to a local-regional concept.

The tendency to move in this direction pushes more and more towards a 'Europe with regions and local entities' instead of a mere union of individual States[11].

10 E.g., article 44(3) of the Austria's Federal Constitution; article 79(3) and article 23(1) of the German 'Grundgesetz' ('Basic Law').

11 C. Panara, The Contribution of Local and Regional Authorities, cit., p. 619 ff..

8.3. The notion of 'national identity' including regional and local self-governments in CJEU's judgements

The judicial bodies of the European Union have been able to focus on elements of national identity in their case-law considering for instance regional languages as part of the national identity[12], demonstrating therefore a willingness to at least consider multifaceted national identities.

One clear example of this approach can be found in case T 529/13 *Balázs-Árpád Izsák and Attila Dabis v. Commission* decided by the General Court of the EU on 10 May 2016[13], dealing with a proposal for a European Citizens' Initiative calling for the creation of the category of 'national minority regions' for the purpose of implementing the EU's cohesion policy.

The General Court confirmed the EU's neutrality and indeed respect towards Member States' own institutional arrangements, pursuant to article 4(2) TEU.: in fact the EU legislature cannot, without infringing that principle, adopt an act which «would define national minority regions, capable of benefiting from special attention within the framework of EU cohesion policy, on the basis of autonomous criteria and, therefore, without regard to the political, administrative and institutional status quo existing in the Member States in question»[14].

On the other side Member States have also tried to rely on their territorial organization as recognized in the 'identity clause' to be exempted from their obligations under EU law. Such an attitude can be seen, for instance, in two infringements procedures opened by the European Commission versus Spain. In the first one (C-151/12[15]) the argument put forward by the Kingdom of Spain «that the Commission attempted to impose, in breach of article 4(2) TEU and the third paragraph of Article 288 TFEU, the manner in which the transposition of the provisions at issue was to be achieved» was not accepted by the Court of Justice. As stated by Advocate general Kokott in her opinion too, the subsidiary application of national law (provid-

12 For more details on this approach in the Court of justice case-law see H. Van Eijken, E. Spelmans Meyermans, Words Travel Worlds: Language in the EU Internal Market, Linguistic Diversity and the National Identity of the Member States, in «Comparative Law and Language», I, n° 1.2, 2022, pp. 87-100.

13 General Court, 10 May 2016, Balázs-Árpád Izsák and Attila Dabis v. Commission, case T 529/13, ECLI:EU:T:2016:282. For a comment see B. Tárnok, The Szekler National Council's European Citizens' Initiative, in M. Szabó, L. Gyeney, P. L. Láncos (ed. by), Hungarian Yearbook of International Law and European Law, n° 1, 2016, Eleven International Publishing, The Hague, 2017, pp. 489-505.

14 Para 76.

15 B. Fernández Pérez, El Tribunal de Justicia ante la cláusula de supletoriedad del derecho estatal en los incumplimientos autonómicos del derecho de la Unión Europea, in «Revista española de Derecho Europeo», LII, 2014, pp. 117-139.

ed under Spanish Constitutional Court case-law when Autonomous Communities have not adopted rules of their own) cannot be considered as an adequate substitute for implementation of a directive (such as direct applicability of the directive itself would not suffice) and this choice cannot be considered as breaching article 4(2) TEU as Spain tried to imply[16].

There is, however, a clear difficulty in striking a balance between the obligation incumbent on EU Member States to comply with EU law, and their right to institutional autonomy, included the possibility for them to delegate normative activities to regional and local bodies, and the limits that may allow them not to be considered responsible of infringement of EU law if the local bodies do not implement or correctly apply the EU legal framework.

On the other side we also have cases in which sub-national entities brought action for annulment of Commission's decisions on State aid and EU financing of expenditure. Until now local bodies have (unsuccessfully) sought to rely on their national identity to be granted the same procedural rights as national authorities: this happened for example in joined cases T-267/08 and T-279/08, *Région Nord-Pas-de-Calais and Communauté d'agglomération du Douaisis v. European Commission*[17] in which «the local authority which granted the aid referred to in the complaint was viewed only as an interested third party, not eligible to take part in the procedure» not being an interested party under article 108(2) TFEU. The General Court declared that there was no violation of the need to respect the constitutional identity of the Member States: in fact, even if it is possible that «an infra-State body enjoys a legal and factual status which makes it sufficiently autonomous in relation to the central government of a Member State», playing therefore «a fundamental role in the definition of the political and economic environment in which undertakings operate»[18]), the role of interested parties in the procedure related to State aid, other than the

16 See para 28-30 of the Advocate general's Opinion delivered on 30 May 2013, European Commission v. Kingdom of Spain, case C 151/12, ECLI:EU:C:2013:354. Spain submitted that «the transposition into national law of the obligations which follow from the provisions in question of Directive 2000/60 for intracommunal river basins outside Catalonia is ensured by the supplementing clause in Article 149(3) of the Constitution. It follows from that supplementing clause in particular that, where the Autonomous Community, having legislative power in a certain field, does not make use of that power or exercises it only in part, the State rules remain in force, either in full or in part, as regards those points which are not regulated by the Autonomous Community» and that the European Commission «sought to stipulate the manner in which the transposition was to be achieved in that Member State» (para. 23 of the judgement).

17 General Court, 12 May 2011, Région Nord-Pas-de-Calais and Communauté d'agglomération du Douaisis v. European Commission, T-267/08 and T-279/08, ECLI:EU:T:2011:209. For a comment see U. O'Dwyer, Procedural Economy, but what Price Procedural Rights?, in «European State Aid Law Quarterly», XI, n° 1, 2012, pp. 263-270.

18 See para 88 and the relevant case law mentioned (in particular CJEU, 6 September 2006, Portugal v. Commission, case C 88/03, ECR I-7115, para. 58, and Joined Cases CJEU, 11 September 2008, Unión General de Trabajadores de la Rioja and Others v Juntas Generales del Territorio Histórico de Vizcaya, cases C 428/06 to C 434/06, ECR I-6747, para. 48).

Member State concerned, is limited and local entities therefore cannot «lay claim to an exchange of arguments with the Commission such as that initiated in regard to that Member State».

8.4. The contribution of local and regional authorities to the system of governance within the EU

Taking into account the recognition of regional and local self-government in the Treaties, it may now be appropriate to address the concrete role of sub-state bodies in the EU's multi-level system of governance.

Local and regional institutions first became involved in the Union's decision-making and policy-making process when the Maastricht Treaty established the Committee of the Regions. Regions and local authorities were initially confined to the margins of EU law-making, being merely responsible for the correct and effective application of EU law[19]. The establishment of the Committee of the Regions expanded their level of involvement, from a descendant to an ascendant role.

With the Treaty of Lisbon, focus on the local and regional dimension resulted in two mechanisms for participation in the legislative process.

The Committee of the Regions is the first body intended to allow regional and local authorities to express their requests and interests within the European decision-making process. It is a political assembly made up of a maximum of 350 representatives, who are local office holders – elective and non-elective – and are appointed for five-year terms by the Council based on proposals put forward by each Member State. This body is entrusted to provide both mandatory[20] and voluntary consultations pursuant to article 307 TFEU, the intention of which is to encourage the involvement of regional and local authorities in European decision-making processes[21].

In addition to its advisory functions, the Committee also has the power to bring proceedings before the Court of Justice in order to safeguard its prerogatives (ar-

19 G. Rivosecchi, Le autonomie territoriali nell'architettura istituzionale dell'Unione europea, in «Rivista di diritto delle autonomie territoriali», I, 2018, p. 309 ff.; A. Kokaj, The Multi-Level Governance of the European Union: the Role of the Local Government, in «Jurnalul de Studii Juridice», XVII, nn° 3-4, 2022, p. 19.

20 The Treaty of Lisbon broadened the range of matters requiring mandatory Committee consultation.

21 Articles 300(3), 305(1-3) and 307. M. Tomasi, Autonomie regionali e identità costituzionale degli Stati membri nell'orizzonte sovranazionale europeo, in «Federalismi», V, 2020, p. 254 ff..

ticle 263(3) TFEU) or to complain about infringement of the subsidiarity principle for legislative acts requiring its consultation (article 8(2) of Protocol no. 2)[22].

In recent years, with the introduction of ex-post review powers, the Committee, whose role was already to uphold the principle of subsidiarity, has increased its focus on defending said principle, although there have rarely been concrete opportunities to activate these powers[23]. The attribution of these ex-post review powers helps to strengthen the assertion of the Committee's political role already at the ex-ante consultation stage[24].

The Committee's composition, functions and modi operandi are not always suitable to ensure that regional and local authorities are truly represented and able to participate at EU level. Its dual nature as an advisory and representative body does not facilitate the Committee's work, which combines lobbying and democratic representation activities. Secondly, the fact that Committee members vary - with some representing local authorities and others representing regional authorities depending on what has been decided by the individual Member States - does not always guarantee convergence towards common goals. Thirdly, the Committee has the function of providing the European institutions with a regional point of view on certain issues in just a short amount of time[25].

Despite its weaknesses, the Committee in any case encourages horizontal coordination among regional and local authorities in the EU decision-making process, connecting said authorities from different Member States and allowing them to contribute to the monitoring of compliance with the subsidiarity principle.

The second mechanism for the involvement of regions and local authorities is the Subsidiarity Protocol.

Article 2 requires the Commission, before proposing a legislative act, to carry out extensive consultations which, «where appropriate», must also take into account «the regional and local dimension of the action envisaged»[26]. Article 5 also gives

22 G. A. Moens, J. Trone, The Principle Of Subsidiarity In Eu Judicial And Legislative Practice: Panacea Or Placebo?, in «Journal of Legislation», XLI, n° 1, 2014, pp. 70-71.

23 M. Tomasi, Autonomie regionali e identità costituzionale, cit., p. 255 ff..

24 B. Guastaferro, Rappresentanza regionale e controllo di sussidiarietà, in «Diritto pubblico europeo», II, n° 2, 2015, p. 3.

25 M. Tomasi, Autonomie regionali e identità costituzionale, cit., p. 256 ff.; A. Kokaj, The Multi-Level Governance of the European Union: the Role of the Local Government, cit., pp. 21-23.

26 Consultations can come in two forms: mandatory consultations that are expressly provided for by the Treaties or through institutional dialogue with associations representing local and regional authorities.

due importance to the subsidiarity principle, focusing on the economic-social impact of draft legislation on regional legislation and the relative financial or administrative burden (Impact Assessment).

Furthermore, regions and local authorities also have a role to play in the Early Warning System, through vertical coordination between national Parliaments and Regions.

Within eight weeks from the date of transmission of a draft legislative act, national parliaments or any chamber of a national Parliament have the right to express a reasoned prior opinion on non-compliance with the principle of subsidiarity. This is where the European legislator has provided the possibility for national parliaments and the relative chambers to be able to consult regional parliaments with legislative powers «where appropriate» (article 6 (1) of the Protocol).

While it should be noted that this mechanism does not guarantee the constant involvement of regions in checking subsidiarity, as it still requires the discretionary intermediation of national Parliaments, it is clear that Member States must involve them when their specific assessment is necessary. It is up to individual national legislation to state when their involvement is mandatory and the relative procedures[27].

Lastly, the role of regions and local authorities as supervisory bodies for the subsidiarity principle is facilitated by two monitoring mechanisms. The 'Subsidiarity Monitoring Network' aims to facilitate the exchange of information between regional and local authorities and European Union institutions, whereas its subnetwork 'REGPEX' is meant for regions with legislative powers and supports regions' participation in the initial phase of the early warning mechanism, providing a platform to share information and examples of best practices in the analysis of subsidiarity.

8.5. Final remarks

In the debate on the future of European Union that was held in the 2021-2022 Conference, one of the points that were discussed is the one related to new role for the subsidiarity principle, a debate that remarked how the EU should not only «review the mechanism allowing national Parliaments to assess whether new legis-

27 For more details, see European Committee of the Regions, G. Vara Arribas, D. Bourdin, The role of regional parliaments in the process of subsidiarity analysis within the early warning system of the Lisbon Treaty, European Commission, 2011, p. 7 ff..

lative proposals at the European level do not intrude on their legal competences» but should also extend such mechanisms «to all regional parliaments within the EU that have legislative power».

A new role for local entities is also being considered, inter alia, in the Final report of the Conference on the future of Europe's proposals on «Equal access to health for all», on «Climate change, energy, transport» (recognizing also the role of local and regional authorities in the green transition) and in the one on «Sustainable growth and innovation (recognizing also the role of local and regional authorities in the green transition). Even in the internal market rules the need to recognise local and regional cultural and production peculiarities is one of the measures suggested in order to enhance EU's competitiveness and deepen the Single Market.

The results of the Conference on the Future of Europe show and confirm therefore the EU's current awareness of the importance of sub-state authorities not only with regard to the application of European Union law (descending phase) but also with regard to its creation (ascending phase).

Local authorities represent a further building block to strengthen the EU's democratic foundations, ensuring European Union adopts policies and regulations that are ever closer to citizens, moving towards the creation of a «legitimacy based on proximity» model[28]. This is confirmed in the final Report of the Conference, which sets out a new role for these entities specifically in key areas that are closest to communities, in light of a reinterpretation of the subsidiarity principle.

The reference in article 4(2) TEU to «regional and local self-government» as a component of national identity that the EU is obliged to respect confirms the attention paid by the European Union to all levels of governance. The Treaty of Lisbon and the Conference on the Future of Europe both therefore highlight an EU trend towards not only a recognition of regional and local self-government but also an intention to enhance its role.

28 L. Frosina, Regioni e Unione europea dopo il Trattato di Lisbona. Il Comitato delle Regioni, i Parlamenti regionali e le sfide della multilevel governance, in «Nomos - Le attualità del diritto», 2015, p. 2 ff.; A. Kokaj, The Multi-Level Governance of the European Union: the Role of the Local Government, cit., p 17 ff..