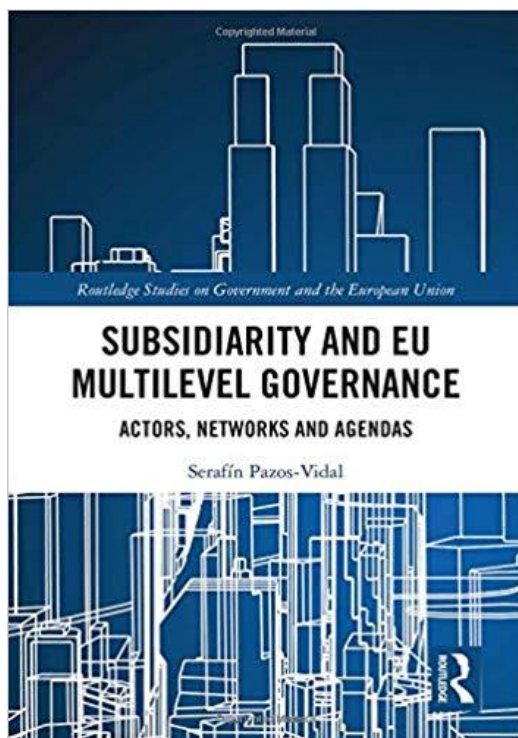


# Subnational Actors and EU Multilevel Governance: Between the Demise of “Europe of the Regions” and the Emergence of Active Subsidiarity

Serafín Pazos-Vidal\*

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## Abstract



While it is topical to say that regional studies is in a moment of change it is certainly so at present time. Building upon and updating the findings of a recent PhD (2017) and the book on the praxis of Multilevel Governance: *Subsidiarity and EU Multilevel Governance, Actors, Networks and Agendas* (Routledge, 2019), the author examines, in the first instance, how the subnational levels interact with the national and European levels from mainly, but not exclusively, an actor-centred perspective (Scharpf 1997, 2000). Utility maximization agendas (Niskanen 1974) also apply to subnational authorities when dealing with the EU (Marks, Sharpf *et al.* 1996; Mazzolenia 2006; Zerbinati 2012). This often coalesces into policy communities (Adshead 1996), advocacy networks (Sabatier 1993) or epistemic communities (Haas 1992). These eventually become formal multilevel partnerships (Marks and Hooghe 2003).

However, we have moved on from “the great regional awakening” and the arrival of the *mesogovernments*

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\* **Dr Serafín Pazos-Vidal** is the Head of the Brussels Office of the Convention of Scottish Local Authorities (COSLA), leading EU policy development and negotiation as well as acting as its main Brussels interface. He is member of the Regional Studies Association research network on Cohesion Policy and of the Spanish Political Science Association (AECPA). Over the last fifteen years, he has drafted or contributed to various reports on the Congress of Local and Regional Authorities, Committee of the Regions, European Parliament, European Commission, as well as various UK and Scottish parliamentary reports. He holds a PhD in European Union from UNED (Spain) its thesis has been converted into the book [“Subsidiarity and EU Multilevel Governance: Actors, Networks and Agendas”](#) published by Routledge on 6<sup>th</sup> March 2019. [spazos15@alumno.uned.es](mailto:spazos15@alumno.uned.es) 0032496084967

(Keating 2013). While not uniform due to the contingency of the regional question (Loughlin and Peeters 2007, Heinelt 2018) the 2008 crisis has tested the very idea of regions and regionalism. There are a number of factors at play:

Firstly, there has been a longstanding confusion between region as an “subject” and region as an “object” (Le Galès 1988), and there has been a tendency, at EU and national level to amalgamate the former with the latter. This negatively affected policymaking.

Secondly, a crucial distinction, particularly at EU level, is between privileged and non-privileged actors. The heyday of the Europe of the Regions as a post-national vision of the EU (Anwen 2008) has barely survived the turn of the century (Tatham 2014).

Thirdly, the EU institutional framework makes all but inevitable that non-privileged actors form coalitions and networks in order to have sufficient critical mass as to be able to influence the decisions of the EU institutions -Donas and Beyers 2013), Beyers and Donas (2014) Tatham and Thau (2014)-.

Fourthly, while the impact of subnational authorities in the EU policy framework has been limited resulted, this overlooks the power of agency. Some non-privileged actors, are able to effectively exploit the windows of opportunity that are available to them. A good example is the Committee of the Regions (CoR) or the European subnational networks (Piattoni and Schonlau 2015; Kern and Bulkeley 2009), thought their behavior can result in principal agent problems (Loughlin and Peters 2011) is geared towards increasingly their legitimacy vis-à-vis the EU institutions than to aggregate their members’ interests.

Lastly, subnational governments face the paradox: on the one hand their existence being challenged by post-financial crisis centralization (Pazos-Vidal 2016; 2019), while socio-economic change results in subnational government being unable to address place-based geographies of discontent (Rodriguez-Pose 2018) while technological standardization reduces the need of decentralisation. On the other, new international agendas -the EU urban Agenda, the Active Subsidiarity Proposal (European Commission 2018), the new European Semester and the UN Agenda 2030- show an increased awareness of the need for multilevel policy adjustment as crucial to ensure that EU and international agendas are delivered.

## **Subsidiarity and Multilevel Governance as proxies for subnational governments EU mobilisation**

Subnational institutional actors, namely local and regional governments and parliaments are non-privileged actors in light of the Treaties. They do not enjoy the privileges and access that national governments, national and constitutional courts and, to a degree, national parliaments have to the EU institutions and its decision-making processes. However, they are affected by them.

This is why well before the approval of the Maastricht Treaty (1992), which recognised the principle of subsidiarity for the first time there had been an extensive debate on the so-called "Europe of Regions" (Anwen 2008). It was particularly marked in those Member States (MS) with a complex territorial structure and unresolved territorial tensions (Morata 2005).

At the same time Marks (1992) coined the paradigm of Multi-Level Governance (MLG) to describe the interaction between subnational, national and EU levels of government in policy areas where they have some shared responsibility, starting with EU Regional Policy but later much expanded to other policy areas (Stephenson 2015). In essence it is both a descriptive and normative paradigm that aims to look beyond the national level and address the EU "territorial blindness" Scharpf (1997), Bache (1998) so that MLG can be seen, according to Marks (1993) itself later with Liesbeth Hooghe as a process of multilevel adjustment<sup>1</sup> to EU integration.

Subsidiarity and MLG are respectively as the legal term and the political science paradigm reverses of the same coin, one that seeks to understand and frame the relationships between different levels of government in a sui generis international organisation which under the principles of primacy and direct effect and unlikely traditional international organisations concerns also the levels under the Member State.

Under such a view subsidiarity and MLG are closely intertwined (MacCormick 1999) so that subsidiarity is a mechanism to avoid zero-sum situations between different levels of government. This is why in Pazos-Vidal (2019) monography examines the praxis on how subnational authorities "use" both concepts to advance their interests.

The 1992 Maastricht Treaty that gives it full recognition of the principle of subsidiarity is thus a way to reassure those actors and institutions that were worried by the acceleration of EU integration and of the power transfer to "Brussels" (Van Nuffel 2011). Subsidiarity has a double nature, constitutional -to regulate the apportionment of shared powers- and the normative -to

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<sup>1</sup> "a system of continuous negotiation amongst nested governments at several territorial tiers – supranational, national, regional, and local – as the result of a broad process of institutional creation and decisional reallocation that has pulled some previously centralized functions of the state up to the supranational level and some down to the local/regional level".(Marks 1993, 401).

regulate the exercise of political power- (Lenaerts and Ypersele 1994). In their landmark debate Craig (2012) and Davies (2012) summarise the debate between whether subsidiarity is a philosophical or political principle or whether it is a legal principle that is grounded on the praxis.

Its fundamental problem, which is central to understand the use that subnational authorities and the EU institutions – notably the Commission- make of this legal concept, lies in its definition. Subnational authorities (and anyone with only a vernacular understanding of the concept) would point out that in articles 1 TEU and 10 (2) TEU establish that subsidiarity means that “decisions shall be taken at the level that is *as close as possible* to the citizen” (a *proximity* definition). In reality however, the operational definition of the concept enshrined in article 5 (3) TEU establishes that decisions need to be taken at the most efficient way, according to its ‘scale’ and ‘effect’. The Commission would normally argue, that the most *efficient* way of dealing with a problem is on an EU-wide scale.

This confusion does not affect the specific issue of the impact of EU integration on subnational actors, it has equally been used for the last three decades by opposite camps of wider debates about EU integration (Delhomme 2019).

However, as the MLG paradigm aims to illustrate, and in some cases encourages, there is rarely dichotomy that is binary one between “more” or “less” EU. Marks and Hooghe (2003) chart a basic typology of MLG where multilevel relationships can be broadly grouped into two ideal-types:

- *MLG Type I* is essentially a multilevel relationship that is formal and contractual, which is prevalent in only a few situations (subsidiarity early warning, implementation of some EU legislation and policies) and in a minority of subnational contexts.
- *Type II of MLG* is much more generic, looser and much more common. It is of varying permanence; solidity and its outputs have varying degrees of compulsion among the concerned actors. It is subdivided into “club” type that can be equated with Adshead (1996) notion of “policy communities” (Haas 1992) “epistemic communities” and Sabatier’s (1993); the “Agency” variant can be equated to the partnership/stakeholder

structures that EU or MS set up to involve lesser/non-privileged actors; the “policy-forming” is a more bottom-up and inclusive form and as such much less common.

**Table I : Democratic Alignment of Type I and Type II Entities**

	Type I	Type II		
		Club	Agency	Polity-forming
<b>Features</b>	Established through constitution building or legislation by higher level of government	Self-generated to deliver benefits to members	Created by government to deliver policies through flexible management under arm’s-length political supervision	Established to engage well-defined constituency of users or residents in local formulation and delivery of specific public policy
<b>Legitimacy</b>	Through electoral systems and civic support	On basis of benefits accruing to members	On basis of central government mandate	On basis of popular participation
<b>Consent</b>	By elected representatives	On basis of self-interested assessment	Appointed by board or nominated by government	Through deliberative processes between board and constituency
<b>Accountability</b>	To legislative body of elected representatives and to citizens	To organizational stakeholders in terms of cost-benefit ratio	To government at higher level on basis of policy performance	To constituency on basis of democratic process and policy achievement

**Source:** Skelcher (2005) as re-elaborated by METIS-EPRC (2014, 32)

Gravitating around the two ideal-types are a range of intermediary steps such as those identified by (Schenderlein 2015, 178) to describe subnational interest aggregation in Brussels, but which can be applicable to other contexts where multilevel subnational interest aggregation takes place: 1. Networking (informal), 2. Cooperation (informal), 3 Coalition (Informal), 4. Working Group (ad hoc/formal), 5. Partnership (formal), 6. Alliance/Network (formal) and 7. Club (formal).

There are a number of factors that can explain the variation, i.e. why in some cases a form of multilevel governance and actor aggregation is prevalent and not in others.

Following Scharpf’s (1997) Actor Centred Institutionalism (ACI), while institutions frame actors behaviour it is *ultimately* the actor that is the independent variable and not the institutions, as it is actors who ultimately making decisions. Hence the rationale of examining policy decisions from

the point of view of actors (Pancaldi 2102), as political decisions are the result of the interactions between actors -each of them having a given agenda (Scharpf 1997). Institutions are “structures of incentives” that can increase or reduce rewards for the actors’ selfish behaviour (Scharpf 1997,39). As such, institutions are also “constellations” of actors from inside the institutions as well as actors from other institutions (Scharpf 2000).

Actors seek the maximisation of their individual benefit while at the same time reducing the constraints (institutional, cultural or cognitive) and liabilities imposed on them. These patterns of behaviour, both inside and outside EU institutions, often result in *collective action problems* (Olson 1965).

At an aggregated level, these patterns of behaviour can lead to public decisions at EU level where individual interests result in bad collective decisions (Jovanovic 2013). This is nothing short of a *tragedy of the commons* (Hardin 1968), whereby policy outputs are primarily driven by transactional interest aggregation instead of by any preordained rationale.

This is hardly new, let alone it is exclusive of the EU. Already in 1935, in describing the US multilevel politics derived from the expansion of federal powers, Schattschneider (1935) coined the expression *New policies create a new politics*. Public policies generate beneficiaries within and around them. This gives those insiders privileged access to both the policy’s formulation and delivery (Lowi 1979). Any observer of EU Regional Policy can attest to such a fact. Rent-seeking inside EU policies (Barca 2009) and distributive politics and vested interests (Elwood and Patashnik,1993) undermine, or even prevent, the attainment of the EU objectives as defined in the Treaties. As recently recalled by Jensen, Koop and Tatham (2014), the multilevel EU system’s power dispersion can be observed in three dimensions: towards the EU, towards the subnational level and horizontally (the latter by way of multiplication of actors and agencies) leaving the Member States attempting to frame, shape and influence these developments.

While noting Kassim’s (1994) critique that many such *coalitions* are too fluid and unstable, (such as the varying actor-coalitions in Cohesion Policy) understanding these alliances and networks is fundamental to understanding EU decision making. This is something that

intergovernmental models have proven unable to capture. Marks (1991), Hooghe and Marks (2003), the founders of the MLG paradigm, are aware from the beginning that the behaviour of actors, when individually considered, has a strong selfish component. But the dynamics of MLG favours gradual integration of interests from what they call the Type II (articulation of actors and more casual interest agglomerations) to what they call Type I (which are more formalised multilevel partnerships).

When it comes to subnational actors specifically a further conceptual confusion clouds the discussion. It is not just that there are ideal-types of public authority across Europe (Loughlin and Peeters 2007) but more fundamentally there is a profound misunderstanding of the concept of “region” . Since the 60s there has been a drive towards decentralising some services (Scharpe 1979). Le Galès (1988) argued, in those Member States the regions are not political *subjects* but primarily *objects* instrumentalised by the central government to provide public policies in the territories on grounds of efficiency. This is obviously a very different political and institutional animal than a region such as, for instance, Flanders, regions (for lack of a better shorthand) that do not only have clear institutional and resources, but have also an *ethos*, indeed a *demos* of their own. The same can be said of those provincial and local authorities set up under efficiency-driven New Public Management compared to those whose primary aim is to reflect a pre-existing human community (Heinelt 2006). Despite such fundamental differences the EU tends to treat all subnational entities as if they were equivalent.

Taken together all these elements, the different types of non-privileged subnational actors, their respective utility maximisation agenda in a given EU institutional context, each institution own maximisation agenda and the window opportunity generated as a result, define the set of potentially available coalitions and interest aggregation, issue network of policy community which in turn result in varying degrees of subnational actors being able to influence and be influenced EU policy decisions.

### **Subnational mobilisation towards the EU. From the Convention to Brexit**

The Laeken Declaration (2001) and the work of the Convention on the Future of Europe (2002-2003) expanded the legal and political framework explicitly in relation to subsidiarity - while recognition for MLG remained implicit. That crystallized in the current Treaty of Lisbon (2007), in force since 2009.

Post 2007 these issues seemed to fade into the background for a few years. This was also due to major institutional changes and some fatigue on the part of its key promoters, such as the regions with legislative powers (REG LEG) (Jeffery 2005).

However, both concepts continued to be developed through secondary legislation and successive reforms of European policies and budgetary periods - for example, via the Structural Funds regulations or caselaw on subsidiarity of the Court of Justice of the European Union (Panara 2019).

In recent years, the relevance principle of subsidiarity and multilevel governance has become more evident again, even at the highest institutional level. Examples are the various Treaties on budgetary discipline and governance of the Economic and Monetary Union of 2012 - TESEM, TSGC, which were adopted in the middle of the Eurozone crisis, as well as the new instruments of European economic governance - as in the case of the European Semester, Europe 2020 and National Reform Programmes. They resulted in a quantum leap in the interrelation between the EU and national public policies, as well at the subnational level. The negotiations prior to the British EU referendum of June 2016, with the UK's proposals to reinterpret subsidiarity and the discussions on the "future of Europe" namely the EU Subsidiarity Task Force (2018), mark an epilogue to this historical cycle of EU integration.

Ironically, according to Tatham (2014) the relevance of the "regional question" over this period of almost two decades from the Convention to Brexit had its heyday even before this timespan even properly began, as it "peaked between 1986 and 2003".

### *"Peak Subsidiarity". REGLEG and the European Convention*

In order to understand the limits to the concerted EU action and institutional recognition of the regions that are theoretically the most powerful ones in the EU, the Regions with Legislative



Powers, or REGLEG, it is appropriate to briefly recall the episode where such cooperation and such shared ambitions were at its apex: the run up and negotiations of the Convention on the Future of Europe of 2002-2003. Such negotiations resulted, after further half a decade of convulsions, in the current institutional framework for subnational authorities enshrined in the Lisbon Treaty.

Despite the fact that the actions of REGLEG (German and Austrian *Länder*, Devolved polities in the UK, Italian and Belgian regions, Spanish Autonomous Communities, Finnish and Portuguese islands) had attracted at the time most of the public attention (no less in some states with unresolved internal territorial cleavages such as Spain) in reality, and despite their theoretical might, they had to compete for access to the Convention with pre-existing and much more institutionalised pan-European territorial associations Assembly of European Regions (AER), Council of European Municipalities and Regions (CEMR), Conference of Peripheral and Maritime Regions (CPMR). Furthermore, the Committee of the Regions (CoR) the only of such actors that due to its EU institutional nature enjoyed of a more privileged status was able to use its own power of agency and agentic power to advance its own institutional agenda regardless of the interest of the subnational authorities it was meant to represent. (Pazos-Vidal 2019).

Quite unsurprisingly, the Convention decided in 2003 on a package of measures that reflected the priorities of the territorial associations and CoR (recognition of local and regional autonomy, a new EU objective n Territorial Cohesion and the above-mentioned prerogatives for CoR and an optional role for regional legislature in Subsidiarity scrutiny, where applicable) which was duly incorporated into the Lisbon Treaty (Ramón 2004) and are a telling example on how interest aggregation can have markedly different degrees of success depending on its members' internal coherence , (Bourne 2004, 2006; Huici Sancho 2009).

#### *Context matters. Variance in the EU mobilisation of subnational governments and parliaments*

The "regional" of subnational question is first and foremost a problem of the domestic context, and national variance can go very far in explaining differences of subnational behaviour towards the EU integration. In this respect it is quite telling the different approach of two institutionally fairly similar, regionalised Member States such as Germany and Spain towards the subnational

dimension of EU integration. Despite both cases being slow in addressing the internal challenges posed by EU integration, with a degree of competition between territorial units and the national government in terms of making their case in the EU the German case ultimately opted to reduce multilevel friction by seeking intra-German arrangement centred around the *Bundesrat* (Elías Méndez 2013). Not such formalised and comprehensive approach was ever possible in Spain neither in term of formulation of national EU negotiation positions (only a weak set of intergovernmental conference arrangements to deal with EU affairs exist), national-regional coordination, regional parliament participation in subsidiarity scrutiny (Flórez Turrado 2013). The Spanish internal disfunction (not an unitary state, neither a federal one with competing national allegiances) also explains why so often some Spanish regions seek direct EU participation as an alternative (Sánchez Amor 2010).

The Austrian *Landeshaupleutekonferenz* and the Italian *Conferenza Stato Regioni* are useful counterexamples to the German and Spanish cases. Neither are state institutions, but they are the central avenue where territorial interests are articulated and when national policy including towards the EU is shaped. Although the *Conferenza* is like its Spanish counterpart a meeting between national ministers and regional ones there are substantive differences the Italian body meets regularly, at least each two weeks, the meetings are publicly known and does effectively shape national EU policy (Bin 2008). Regular practice softens multilevel friction.

The efficiency of the Austrian case, in spite of having a *Bundesrat*, also rests on the existence of two political body that frame a common voice for the regions: the regional presidents Conference (*Landeshauptleutekonferenz*) in addition to the constitutional agreement was signed on March 1992 to establish how *Länder* (and Local Authorities) would help conform Austrian EU policies (Bischof, Pelinka and Gehler 2006). This makes Austrian federalism, *de jure* weaker than the German one, *de facto* stronger politically (Karlhofer and Pallaver 2013).

Still, it would be misleading to regard as Lander and the regions as necessarily the most effective actors in subnational mobilisation towards the EU (Pazos-Vidal 2018). In some case municipal authorities have a degree of influence over national policies towards the EU or directly towards the EU institutions that is higher than theoretically more powerful legislative regions. In this

respect the various central-local mechanisms that have been developed in unitary, consociative, multiparty political systems such as those of the Scandinavian countries of the Netherlands are salient examples. However as discussed in Pazos-Vidal (2018, 2019) despite such consensus-driven mechanisms and culture, the state bureaucracy retains a degree of interest maximization: the Swedish or Danish hearing mechanism are just that, hearing processes where the participating subnational authorities or their representative associations can at best hope that the views are reflected when the national government or in the Danish case, when the national parliament sets the national EU policy. National ministries use the calendar to react to EU negotiations or to seek parliamentary mandate in order to maximise their own autonomy. Hence the need for these associations to proactively provide views at an early stage, well before formal proceedings start is crucial as to maximise their influence – to do this the early warning provided by their Brussels Office comes into play. When it comes to information sharing the existence of a longstanding relationship of trust reassured national officials to share information and documents of EU negotiations: arguably the Dutch municipalities association has much more information and documents of Council negotiations than, for instance, the largest legislative region in Spain.

In other words, aggregation is key. While Donas and Beyers (2013), Beyers and Donas (2014) Tatham and Thau (2014) place a particular emphasis in the powers of the respective regions as a determinant for their different behaviour and performance both on an individual or aggregated way quite clearly subnational authorities being non-privileged actors the most cost-effective strategy for interest maximisation is aggregation.

For instance, the contrast between the symbolism and the praxis of the so-called regional “embassies” is quite stark. Neither the national bureaucracy and political elites of federal Germany and Austria, nor regionalised Italy and Spain did welcome the initiatives from regions at their own will to set up a Brussels presence, in some cases well beyond their EU accession, a fact that in most cases was only acknowledged after a constitutional court ruling (Hooghe and Marks 2001, Hein 2015). However as described by Schenderlein (2015) or Pazos-Vidal (2019) it is the aggregation of interest and the creation of policy or at least issue networks (first and

foremost among regions of a given country, then more widely with others) what ensures the most cost-effective degree of influence and institutional access.

Contrast with the often-overblown EU ambitions of the regional governments is the cooperative work of *regional parliaments*. The Lisbon Treaty Protocol No. 2 (article 6) enables the participation in EU affairs of regional parliaments with legislative powers via the subsidiarity Early Warning System, provided that they are able to work with their respective national parliaments, something that is sketchy at best (Gamper 2013, Fromage 2017). Thus, because and despite of these limitations the 74 regional legislatures to engage in EU matters voluntary, indeed stubbornly agree to cooperate on a Pan-European scale to participate in subsidiarity scrutiny and to contribute to the main EU policy discussion (Abels 2016). The Conference of Regional Legislative Assemblies (commonly known as CALRE) and the regional interparliamentary exchange system of the Committee of the Regions (REGPEX) provide the locus for that cooperation. While their activities are too heterogeneous to draw overarching extrapolations (Bursens and Högenauer 2017) they are comparably more similar in their functioning, and in a way less political than the executives, than the regional premiers that used to make up REGLEG. This can go a long way to explain the progressive development of REGPEX particularly since Lisbon whereas REGLEG has followed the opposite trend. Indeed Borońska-Hryniewiecka (2016) when comparing the cases of Spain, Belgium, UK, Germany and Italy finds that growing interparliamentary cooperation benefits the scrutiny of their respective regional governments. Nevertheless, regional legislatures are deficient policy entrepreneurs with difficulties, gaps and inconsistencies to work as networks.

In this respect *Pan European territorial associations* constitute a further degree of interest aggregation that confers upon them both agentic and agency power (using Weber's definition) The kind of "composed actors" (Scharpf 1997) is inevitable, the more these organisation secretariats spend engaged at EU level the more likely that by isomorphism they tend to adopt behaviours that imitate that of the EU institutions, without being EU officials. The secretariats of these organisations develop a maximisation agenda of their own that have often little to do with any direct instruction or preference of their principals, particularly if they progressively

accumulate certain privileges (membership of EU advisory groups, EU grants, speaking role in EU conferences, EU guest speakers at their events). This contrasts with the more optimistic assumptions around these organisations by authors such as Kern and Bulkeley (2009) which provide somewhat more positive view of the emergence at EU level of what he calls "Transnational Municipal Networks" the role of such intermediaries indeed reflect a real "principal agent problem" in the sense of Jensen and Meckling (1976). In the case of Eurocities and CEMR such dysfunctions have been extensively studied by Baptista (2016).

Interest aggregation, the more institutionalised they become tend towards principal agent problems. This is paradigmatic in the case of the European Committee of the Regions (CoR), the EU official organ under Article 300 TFEU to represent subnational authorities, through an advisory role, in the EU legislative process. In other words the CoR was created with the purposing of integrating centre-periphery cleavage described by Lipset and Rokkan (1967, 554) in the EU institutional setting. By contrast, the CoR's increasing institutionalisation over the last 25 years resulted in the progressive dominance of party-political structures over territorial representativeness (this evolution is described in great detail in Pazos-Vidal 2019). Its obsession for internal consensus of the CoR secretariats and behaviour geared towards expanding the CoR institutional positioning over and above the representativeness of interests of its members is reflective of the logic of appropriateness within an EU institution, in line with Hix (2007, 145) characterisation of the EU as having a "hyperconsociative" ethos. Indeed representativeness is the key word, for unlike what is commonly understood CoR members (formally nominated by national governments) hold under article 300 (4) TFEU a representative and not an imperative mandate.

Piattoni and Schönlaue's (2015) characterisation of the role of CoR is reflective of its formal attributions under the Treaties. Their conception of CoR role is that of transcending territorial cleavages to transform them into a collective *ethos* -already argued in Piattoni (2012)-. CoR role would be to articulate consensus.

Piattoni and Schönlau in their landmark monography about CoR rightly affirm that its influence in the EU decision-making process is bigger than its formal attributions as it is subtle. They define it as “policy-shaping” within an EU framework that is discursive and that involves many actors in and around the institutions. They apply to CoR Urbinati’s (2006) notion of democracy as a continuous discursive process where the possibility of influencing and scrutinise decisions can be as important as being formally part of the decision-making process (Piattoni and Schönlau 2015, 20-26). For this reason, it is questionable the common wisdom in EU circles, as Warleigh (1997) put it, that the Committee of the Regions (CoR) is “a committee of no importance”.

The CoR is part of the EU decision making process and this official status makes it the default “locus” of aggregation and shaping of political will of subnational authorities towards the EU. It sometimes helps them enhance their input into EU decision-making in ways that they as non-privileged actors would not achieve on their own.

This however comes at a cost: the CoR own agentic power and institutional autonomy versus the authorities it is meant to represent mediatises when not constraints the ability of subnational authorities to influence EU decisions.

### **Subnational mobilisation towards EU policies and policymaking**

As mentioned above the participation of subnational authorities at EU level has since its heyday two decades ago much receded since as a matter of political or academic interest. In most cases this was the result of finding a domestic arrangement that reduced the need for having an extensive direct engagement with the EU institutions. Secondly because the limits to form of participation that could be remotely comparable with that of privileged actors were and are limited by the EU institutional framework. Moving from a vision, indeed mirage, of a “Europe of the Regions” towards, at most an “Europe with the Regions” (Panara 2016, 2019; Hepburn 2008). Third, the available forms participation act as a disincentive for the non-insignificant number of subnational authorities whose political leadership has a motivation to engage at EU level is significantly driven towards public political positioning towards a domestic audience, rather than the issue that is at hand. Fourthly, the arrival of the economic crisis and the austerity

measures that subnational authorities had to confront to acted as a disincentive to engage in what is normally perceived a non-core issue such as European affairs.

### *Subnational mobilisation in EU Cohesion Policy*

Of course, paraphrasing the famous quote from Leon Trotsky, “the regions may not be interested in the EU, but the EU is interested in the regions”. While this is quite clearly the case in EU Regional (Cohesion) Policy over the last decade and precisely as a result of the economic crisis and the resulting crisis of confidence in the EU there has been an increased awareness coming from the EU institutions about the need to better understand and when not involve the subnational levels.

Starting with Cohesion Policy (CP) the original inspiration for the development of MLG as a concept stemmed from the observation on the way the EU Structural Funds operate (Marks 1993; Bache 2008). To this day, these funds, and the policy they implement are the clearest example of MLG. CP delivery exemplifies the structured Type I MLG model by Hooghe and Marks’ (2003) classification. However, its policy formulation reflects a Type II MLG shaped around ad hoc or semi-permanent alliances of interests operating in a multilevel fashion.

The formulation of the 2014-2020 EU Structural Funds Regulations and programmes show that all actors were less driven to achieve an efficient solution than to maximise their own utility (and reduce liabilities) in a multilevel context (Pazos-Vidal 2014, 2016, 2019). Subnational approaches to EU policy development being more of a rent-seeking one rather than keenness in delivering an overall EU policy outcome. There is an underlying tension between the national and the EU level on who governs this policy (Bachtler and Mendez 2007), with the subnational level being a variable in between both. As we have seen in the 2014-2020 programming period, in particular through the development of the new European Code of Conduct on Partnership, the new Integrated Territorial Development instruments (notably CLLD and ITI) and the Transition Regions campaign the European Commission is keen to act as a policy entrepreneur often not reacting to the demands of subnational authorities but in fact using them as a channel to persuade national governments of the added value (overall, but also in terms of national “juste retour”) of

having a strong territorial policy – itself a way to keep an ambitious EU Cohesion Policy (Pazos-Vidal 2019). In this respect the multilevel variable coalition dynamics that can be observed in Cohesion Policy result in problems of collective action where policy outcomes are the result of transactions to satisfy interest maximisation rather than multilevel adjustments to address an overall policy rationale. In fact the move towards integration and place-based approaches by bringing together the various EU structural funds that was decisively attempted in the 2014-2020 period was substantially reversed in the Commission proposals for the 2021-2027 period. This despite growing evidence of the impact of territorial inequality not just in economic development but also in harbouring antidemocratic and extremist (and indeed anti-EU) behaviour, such as the so-called “Geographies of Discontent”, or “Places that don’t Matter” (Rodriguez-Pose 2018). Thus integration of the various EU territorial investments and more recently their proposed U-turn is the by-product of variable coalitions within the European Commission at different budgetary rounds, resulting in changes in policy conception and delivery that has little to do with subnational mobilisation or the needs of the territories themselves (Pazos-Vidal 2019).

Still, other EU policy that have initially little do to with subnational government (or at least they were not conceived that way) had to progressively acknowledge the impact of subnational evidence, awareness and behaviour in the eventual success of policies previously agreed between the EU and national levels.

### *The subnational dimension of Europe 2020*

Europe 2020 is so far, the latest attempt to provide an overall narrative of what the EU stands for. The Europe 2020 Strategy is the latest incarnation of a process that can be traced back to the 1985 and 1993 Delors White Papers,<sup>1</sup> the Santer’s Agenda 2000, Prodi’s 2000 Lisbon Strategy (2000) and Gothenburg agenda (2001).

Thus this strategy (EC 2010, 27), is not only a decade-long statement of political ambition. It also aims to make a step change in the way the EU and MS agree and deliver together a range of

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<sup>1</sup> European Commission, Communications (1985), (1993), (2000), (2001) and (2020).



very precise objectives,<sup>1</sup> to achieve “smart, sustainable and inclusive growth” by the end of the decade through cooperative MLG (Drumaux and Joyce 2014).

The financial crisis, particularly in the Eurozone, has sped up the creation of a comprehensive performance management system linked to Europe 2020 by way of the European Semester process and in particular the National Reform Programmes which each MS is expected to report annually on their progress towards the various Europe 2020 goals and the recommendations that the Commission has made to them in the so-called Country Reports.

Notwithstanding, the fact is that the EU and the Commission in particular does not have the levers to instil action into national and subnational levels of government. Therefore Commission has developed various strategies that concern Europe 2020 itself but more recently with the Juncker Commission also the so-called “Better Regulation” package and “Structural Reform”.

Starting with the Europe 2020 European Semester process the Commission has belatedly related in the 2019 European Semester process to the longstanding calls of the Committee of the Regions (here indeed acting as a genuine policy entrepreneur on behalf of its membership) through its Europe 2020 Monitoring Platform to start addressing the territorial blindness of Europe 2020: in most Member States with the notable exception of Belgium, Sweden, the Netherlands and partly the UK territorial authorities are entirely absent from the Semester process, even when they are the competent authorities. In most cases their involvement is protocolary rather than a meaningful discussion (Pucher and Martinos 2015; 2017). As with other previous examples, there is a strong correlation in the pre-existence of domestic multilevel consociative templates that are simply rolled out to comply with the Semester and any territorial dimension of the elaboration of the respective National Reform Programmes. Only recently with the publication of the 2019 Country Reports there has been an attempt to make a more explicit subnational dimension to the Semester process but mostly linked to aligning the EU Structural

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<sup>1</sup> 75% 20-64 Employment rate, 3% of EU GDP in R&D; the 20/20/20 by 2020 climate and energy targets, potentially reaching 30%; early school leaving rate below 10%; at least 40% of people aged 30–34 with a higher education degree; at least 20 million less in or at risk of poverty/social exclusion (EC 2010, 2).

Funds 2021-2027 to the Semester than so far a genuine exercise of addressing the subnational and territorial dimension of the Commission's Country-Specific Recommendations.

In addition to promote the “Lisbonisation” of pre-existing EU policies, such as the introduction of payments in Cohesion policy being conditional to complying with Europe 2020 criteria, there has been during the Juncker Commission the focus from ensuring that national and subnational authorities contribute towards shared EU goals to a focus on these authorities' actual capacity to deliver these EU commitments. In 2014 a Structural Reform Support Service was created to support MS reforms in most domestic policy areas from justice to healthcare in line with the Semester and CSR process (EC 2018). Less than four year later this small programme of €300m evolved into a new Reform Support Programme tabled in May 2018 by the Commission as part 2021-2027 EU budget proposal, and which included no less than €25bn budget (with an option of an additional 5% from the reduced EU Structural Funds budget) while the same time the Commission proposes a much stronger link between the EU Structural Funds and the semester process (EC 2018a, 34). Though not explicit the content and decision of about undertake these structural reforms, which can cover subnational authorities, is essentially conceived to allow the national level being the driver for such reforms.

While the structural reform proposals are voluntary and leverage of the Commission to instil Europe 2020 compliance using fiscal of EU funding levers the scope and depth of EC involvement in domestic policies is unprecedented. In that respect, rather than weakening the EU institutions the 2008 crisis reinforced them. This makes Europe 2020 is part of the “policies without politics in Brussels and politics without policies on the national level” that Krastev (2017, 66) has eloquently identified as the EU governance formula particularly since the 2008 crisis. A weak or non-existent input legitimacy of the Semester/2020 processes together with a more centralising notion of “structural reform” is challenging for subnational authorities (Pazos-Vidal 2019).

*Limits of subnational participation in EU Better Regulation*

The need of a more efficient EU but also the need of a greater legitimacy and accountability drove the Juncker “Commission of the last chance” to giving more salience to EU regulatory simplification via the “Better Regulation” agenda and in particular its 2015 package (Dinan 2016 Radaelli and Schrefler 2015). This package (European Commission 2015), included, revised Stakeholder Consultation Guidelines, a new REFIT Platform, and a new Interinstitutional Agreement on Better-Lawmaking. It was updated in 2017.

It was championed by the Commission 1<sup>st</sup> Vice President Frans Timmermans, who during his time as Dutch Foreign Minister led a review of EU regulation that linked subsidiarity with regulatory simplification (Dutch Government 2014). This is precisely the approach taken in the 2015 Better Regulation package, which also included, as part of a more comprehensive Better Regulation Toolbox (2015) a new instrument to assess the compliance of draft legislation in preparation with the principle of Subsidiarity, itself the latest instalment of successive “Subsidiarity Checklists” developed by the Commission to assess conformity with the principles of subsidiarity and proportionality since they were incorporated into the Maastricht Treaty.

Of potentially more consequence for subnational participation could have been the new REFIT Platform bringing together the Commission, national authorities and other stakeholders in regular meetings to improve existing EU legislation. This includes subnational authorities. However reflecting the privileged status of CoR and its own policy entrepreneurialism towards the Commission as regards to Europe 2020 and better regulating (expressed in its CoR-Commission cooperation agreement) it fell on CoR to provide one of its own members to represent *all* local and regional government. It is a clear sign as well that CoR, as scoped by Piattoni and Schönlaue (2015), has been very successful in articulating a *voice* in the EU interinstitutional framework. It marks a change from other Commission advisory bodies where subnational authorities were represented directly (or, more specifically, by their European associations).<sup>1</sup> Furthermore as then CoR has not developed a reporting mechanism that can enable subnational authorities to use CoR as a conduit to the REFIT Platform its added value for representing views other than lowest common denominators is limited.

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<sup>1</sup> For instance, the Partnership Principle Group of Experts, the ENRD, the Urban Development Group, the NTCCP and various ad hoc bodies in Transport and Environmental policy.

However the Better Regulation package does offer expanded opportunities for subnational pre-legislative input EC 2017, 4-6). However the contribution from both individual or organised, EU-wide aggregation of subnational authorities have been limited, particularly if we compared with European Social Partners (Sabato, Vanhercke and Spasova 2017). This can be understood given that the latter are more uniformly organised across the EU and have an EU Treaty structured mechanism of influencing EU legislation by way of the European Social Dialogue. Furthermore the interest of subnational authorities is much wider in scope and heterogenous making more difficult for them to engage, as the 2019 evaluation (European Commission 2019c, 31) makes clear.<sup>1</sup>

#### *Better Regulation as EU multilevel metagovernance for urban areas*

While the territorial, indeed subnational dimension of the Better Regulation framework is limited a separate better regulation exercise has been developed by the Juncker Commission. The New EU urban agenda is a case in point of policy entrepreneurialism for multilevel EU metagovernance with a clear subnational dimension (Pazos-Vidal 2017, 2019).

The so-called “Pact of Amsterdam” agreed in 2016 and the multilevel thematic partnerships that have stemmed out of it is a notable example of a policy community of policy entrepreneurs able to sustain a campaign for a long time waiting for the right window of opportunity to arise. (Faludi 2009)

It is also notable for, unlike most other cases considered here, it is not the Commission but Member State officials, and namely those involved in the Dutch EU Presidency of 2016 the ones that managed to successfully persuade the other Member States to launch this agenda against the

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<sup>1</sup> This is quite clearly summarised in the responses to the Commission consultation on stakeholder guidelines (European Commission 2014). The stocktaking of 2019 shows that less than 5% of responses to the REFIT Platform came from public authorities including subnational governments and the need for more tailored and territorialised tools to engage with them (European Commission 2019c, 8-9, 10; 2019c)

backdrop of the changing positions of the Commission, and indeed the competition between and policy entrepreneurialism from different parts of the Commission, over urban issues.

The reinvention of the EU Urban Agenda by the Pact of Amsterdam brings to the fore fundamental questions of EU urban “governance of governance” that is, of metagovernance. This is a concept that aims to find an accommodation and coordination of different actors bringing down the barriers and silos that are prevalent in a fragmented policy landscape (Rhodes 2007; Sorensen, 2006). Very often, this need for more alignment between governance actors and networks happens in a vertical way, as is the case in the EU, hence Jessop (2004) also discusses multi-level metagovernance.

The genesis of the new EU Urban Agenda reflects Kingdon’s (1984) model of policy entrepreneurs within government, including their outside policy communities, according to which actors wait for the political window of opportunity to turn ideas into formal rules and policies. The aim of policy entrepreneurs of achieving EU recognition for urban matters took priority over content: what was originally an EU-wide initiative focused on territorial socio-economic development was turned into a form of multi-level governance. The then new Juncker (Timmermans) European Commission's focus on “better regulation” offered the window of opportunity for achieving that recognition by creating 12 partnerships of EU, national and city officials to assess the appropriateness of existing policies for urban areas (pretty much following the Subsidiarity review model previously advanced by Timmermans as Dutch Foreign Secretary). They don't only address “classic” Territorial Cohesion/funding targeting issues but also a wider set of domains such as digital, migration or climate adaptation. This successful recasting is problematic, however: what is a “city” remains a normative concept and many of these 12 themes are not necessarily “urban” in nature. Also the fact that the participation of individual cities, networks, national ministries and EU Directorates-General is voluntary makes it a prime case of risk of self-selective bias.

Three years on, “most actions under the Urban Agenda for the EU are delivered through partnerships, each made up of a variety of members. The fourteen partnerships have brought together 23 Member States, 96 cities and/or metropolitan regions, 10 regions and 17 DGs of the European Commission, and no less than 33 institutions, ranging from European umbrella organisations, programmes and networks, to civil society organisations and private companies. In

total, 262 partners work together, embodying the principle of shared ownership and multi-stakeholder involvement.” (EUKN and Ecorys 2019, 7).

It is a case of EU and indeed Member States mobilising “with” and “for” subnational government rather than “by” subnational, in this case urban authorities. Rather, they are beneficiaries of a window of opportunity generated by the policy entrepreneurialism of the Commission (Timmermans, DG REGIO) and a group of Member States led by the Netherlands. It is also a case in point of policy fragmentation for this exercise of subnational better regulation is not structurally integrated in the wider, and much more central for the Commission policy-making process, which is the Better Regulation/REFIT process. It is another example on how loosely used concepts used to define subnational levels of government (“urban” being as catch-all as the above-mentioned of “region”) in EU policymaking, to the point of diminishing the value of the exercise. All this makes its continuation of this exercise rather dependent on the continuity of the policy entrepreneurs and the policy communities that have been generated or in some cases reinvigorated via the thematic partnerships.

**Table II: Governance of the European Urban Initiative**

Roles	Cities	Member States	European Commission	Management
URBACT (shared management)	Not represented	Strategy steering. Management by one Member State	Supervision	Managing authority – secretariat CGET
Urban Innovative Actions (UIA) (Indirect management)	Not represented	Not represented	Management	Entrusted entity Secretariat
Urban Agenda of the EU (UAEU) (Intergovernmental process, direct management of administration)	Represented by CEMR and cities network	Supervision	Management	EC - Framework contract
Urban Development Network (UDN) (direct management)	Not represented	Not represented	Management	EC - Framework contract
EUI based on the Commission proposal (Indirect management)	Strategy steering	Strategy steering	Strategy steering and management	Entrusted entity Secretariat

**Source:** European Commission (2019a, 7)

Furthermore, the EU agenda is not even the only “new urban agenda” in place. Neither it is the only urban send within the EU itself, as the above table shows. Almost at the same time the Dutch were busy preparing their Pact the United Nations agreed UN Sustainable Development Goal 11 *Make cities inclusive, safe, resilient and sustainable* adopted by the United Nations in September 2015 and the UN agreement for Development of Sustainable Cities (HABITAT III) which was signed in Quito in October 2016 (EC 2016). Many governments (and the Commission) have already committed to implementing the goals and indicators of these agendas of the United Nations Furthermore, many of the above-mentioned local government networks are very invested in the SDGs, in some cases (e.g. Italy, Spain, France, Sweden, Belgium), due to some institutional inertias, more decidedly so than they do with regards to the EU urban agenda.

### **Subsidiarity comeback: national and EU proposals in the age of ‘Brexit’**

While it has been almost twenty years since the vision of a “Europe of the Regions” or their proxies the principle of Subsidiarity and Multilevel Governance had political momentum, having later then receded into a jurisdictional, procedural, policy or regulatory matter, it has as a result of the Brexit saga (and its proxy, the “Future of Europe” discussion) attempted at comeback to the front EU political discourse.

This latest incarnation takes however a different guise: from being in the past mostly the preserve of non-privileged actors this time it is brought up by a number of Member States. Increasingly, “subsidiarity” is used as a codeword for renationalization of EU legislation and EU policies, including their financing.

The Commission (but not MEPs) reluctantly engaged by trying to frame the debate to safeguard its prized near monopoly of the legislative initiative. Novel interpretations have emerged, notably the (Dutch-inspired) attempt to couch subsidiarity with “better regulation”.

The 2018 Subsidiarity Task Force<sup>1</sup> proposed to move from legal and binary confrontations about about who is best placed to exercise a shared competence towards what it termed “Active Subsidiarity”, a process-driven policy formulation and delivery that bears strong resemblance with the procedural “due diligence” multilevel consensus-building and adjustment that is proposed in this book to the gap between the two competing definitions subsidiarity as “proximity” versus “scale or effect”.

It was the Dutch Subsidiarity Review (2013) and the UK Balance of Competence Review (2014) that started this new cycle of soul-searching for the true meaning of “subsidiarity”. Both broadly address subsidiarity not as a matter of competence but as a matter of efficiency (simplification). Both provided, despite lengthy preparatory exercises (particularly in the British case) limited practical suggestions. However, subsidiarity did form a core element of the UK renegotiation attempts before the 2016 which resulted in the 18 February 2016 Council Conclusions. Together with the Commission Communication on subsidiarity (EC 2018a) that came out of the work of the 2018 EU Subsidiarity Task Force these two Communications represent the state of the art of the question. Both exercises are notable as they aim to overcome the dichotomy between the EU operational definition of subsidiarity and the more rhetorical and commonly understood version of the concept. However the UK attempts, as well as later proposals from Austria have more to do with potentially limiting the transfer of powers towards the EU (under a logic that is not too far from that of what the German Constitutional Court in its *Maastricht* and *Lisbon* rulings<sup>2</sup>) than with the subnational dimension of the question. In fact, in the case of the 2016 subsidiarity negotiations ahead of the British EU referendum (the Task Force for strategic issues related to the UK) there was no reference whatsoever to the Devolved or subnational aspect of subsidiarity.

The 2018 Task Force was a different matter for partly due to the refusal of MEPs to joint representatives of national parliaments and the Commission with CoR members resulted in the subnational element being far more prevalent. The fact that this task force was timed to occur before the Austrian EU Presidency, which was keen on subsidiarity and is a federal state (indeed

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<sup>1</sup> Decision C(2017)7810 of 14-11-2017.

<sup>2</sup> Beschluss vom 12. Oktober 1993 - BVerfGE 89, 155 and more specifically BVerfG, Judgment of the Second Senate of 30 June 2009 - 2 BvE 2/08 -, paras. (1-421), had proposed to preserve from EU integration a modicum of self-determination of Member State’s internal life.



the most vocal representative of the national Parliaments was Austria's Reinhold Lopatka) also helped (EC 2018b). However excluding that of CoR, subnational participation was modest: excluding many Austrian contributions there was a contribution by the Dutch municipalities' association, Baden-Württemberg, Bavaria, Piedmont and some general points from the Italian regions. Regional Parliaments and CALRE were once again more active. There was also a modest joint submission of six REGLEG but not of REGLEG as a network, a telling sign that not even in the best opportunity to make their voice heard since the Convention.

The Task Force and the subsequent Communication defines the concept as “Active Subsidiarity” (EC 2018a, 6; EC 2018b) meaning a continuous multilevel engagement throughout the entire policy cycle. In other words a process of “**due diligence**” whereby subsidiarity meets multilevel governance, particularly around its original notion of MLG as multilevel adjustment. This is hardly surprising for both the Netherlands (as this task force was led by Frans Timmermans) and Austria are multiparty, consociative democracies with quite sophisticated mechanism of multilevel cooperation (the Austrian constitution's cooperation arrangements and the Code of Interinstitutional Relations of the Netherlands), coupled with the above-mentioned hyperconsociative ethos of CoR, it is quite understandable that the outcome of the Task Force is so similar to the political cultures of its main promoters. Once again, CoR is able to capitalise on its privileged position (vis-à-vis the regions themselves and their pan-European networks) in the EU institutional framework to entrench itself further in the EU decision making process. Furthermore CoR makes use of its well-known policy entrepreneurial ability proposed a set of “Regional Hubs to Assess the Implementation of EU legislation” (CoR 2018b), which in turn are not too distant from the Dutch model of central-local EU partnerships.

## **Conclusion**

It remains to be seen if these recent developments are a mirage caused by the confluence of EU soul-searching in the wake of the UK leaving the EU or whether this signals a more structural change about how subsidiarity, MLG and subnational governments are understood and operated in the EU decision-making system, a change that may be carried on by the Von der Leyen

Commission.<sup>1</sup> Nevertheless this comeback of subsidiarity, and the previous milestones over the last two decades described above, allow us to draw some concluding considerations about the role of subnational actors and the EU.

First, subsidiarity and MLG are not just proxies for the discussion on the role of subnational governments in the EU. They are much more consequential than that, and for most of the last quarter of a century have more consistently concerned more about matters of national versus EU than subnational aspects. Only at certain times such as during the European Convention or the Subsidiarity Task Force has the discussion had a significant subnational flavour and subnational engagement.

Second, Subsidiarity and MLG are not just concepts but a reflection of praxis about the arguments raised by subnational actors and of the actions that they undertake in the EU context. In so doing, subnational EU mobilisation is highly dependent of domestic contexts and the degree of prevalence of domestic consociative arrangements.

Third, when subnational EU mobilisation occurs it is geared towards pretty narrow interest maximisation. The heterogeneity of subnational actors results in difficulties in aggregating interests on a pan European scale, and when it does it tends to be captured or at least mediated by their representative bodies operating under a logic of collective action. This is particularly the case by CoR whose privileged status in the EU framework confers it both agency but also agentic power over the subnational entities it is deemed to represent.

Fourth, even if the subnational dimension of EU integration is not at the forefront of the discussions over future EU integration the EU institutions and in particular the Commission have come to increasingly realise that without the compliance of the subnational level (ex-ante conditions) or its cooperation (semester process, structural reform, partnership principle) many decisions agreed between national governments and the EU institutions will not take place.

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<sup>1</sup> Her political Guidelines (Von der Leyen 2019, 20) made only a passing reference to subsidiarity when discussing enhancing the right of legislative initiative of the European Parliament.

Fifth, multilevel policy-making tends to be led by other actors than subnational authorities, even in areas such as Cohesion Policy that are directly addressed to them. However, the success of multilevel decisions depends on the fact that no EU proposal will be effectively put into practice if it is not able to minimally satisfy all the interests involved, including subnational ones. One might be tempted to call this the “**iron law of Multilevel Governance**”.

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