



Observations on “EU subsidiarity as an antidote to centralization and inefficiency” by Adriaan Schout

In an article published at the Wilfried Martens Centre,[1] Adriaan Schout, Professor of European Public Administration at Radboud University in Nijmegen and Senior Researcher at the Netherlands Clingendael Institute, looks at issues of European governance, which he clearly has a good grasp of and experience with.[2] He pleads for a new administrative model for the European Union (EU), better adapted to its nature, with more decentralisation and empowerment of Member States. He bases his reflections on an idiosyncratic reading of the subsidiarity principle.

This is a highly interesting article addressing an issue that is often neglected in the public discourse on the EU: how to ensure implementation on the ground of EU rules and decisions. We have endless debates about the *what*, but we tend to neglect the question of the *how*.

It takes the reader some time to get to the core of Schout's reasoning because he spends too much time on theorising over notions like subsidiarity and federalism, and on

squeezing his thoughts on governance into his reading of the latter. But as one reads on, one discovers a profound reflection on EU governance, with astute observations on the distinction between “integration” and “cooperation”, “centralisation” versus “decentralisation,” “efficiency” versus “effectiveness.” Contrary to the initial impression the article creates, Schout does not roundly condemn the EU nor the Commission in a fit of Euroscepticism. His description of positive instances of EU governance increases the relevance of his criticism in other instances.

Some questionable assumptions

It is worth saying a critical word about Schout's theoretical assumptions, both because they reflect widespread misconceptions about the EU and because they obscure rather than enlighten the understanding of his core messages. In his summary, he talks about “the European federation.” The EU is not a federation, it is a very *sui generis* union of states and peoples with federal, confederal, and intergovernmental elements; it is in

[1] Adriaan Schout, *Future of Europe (EU Subsidiarity as an Antidote to Centralization and Inefficiency)*, 2022 Wilfried Martens Centre for European Studies.

[2] He has worked on the European Environment Agency, aviation safety, border governance, the Recovery and Resilience Facility, and the European Statistical System.

fact a new legal order developed over the years.[1] He presents subsidiarity as a "legal separation of tasks between the national and EU levels." That is not correct. It is the principle of conferral under Article 5(1) of the Treaty on European Union (TEU) which establishes the delimitation of competencies in the Union. The subsidiarity principle defined under Article 5(3) is about the modalities of intervention of the EU in areas where it does not have an exclusive competence. The assessment of how to apply it is political, not legal. The European Court of Justice controls whether the institutions have considered the subsidiarity principle when deciding measures.

The latter is a concept that comes from a debate in the Catholic church about where to locate powers. In the EU, it is about taking decisions at the lowest possible level and closest to where they will have their effect. *A contrario*, this also means that there are instances where decisions should be taken at a higher level, because that is the best or most effective way. I do not know where Schout got the idea that there exists "a legal definition of subsidiarity as upward delegation." Certainly not in the treaties, nor, I would guess, in any official EU text.

Talking about the Commission, Schout writes: "Rather than being a hierarchical body that focuses on legislation and supervises member states, the Commission needs to focus on the managing of networks." This is a strange formulation that puts the treaties on their heads. It is true that creating networks is one of the tasks of the Commission, but the latter does have a role in legislation, since it has the sole right of initiative. It is not a "hierarchical body" deciding on legislation; it makes proposals, but the Council of the Union and the European Parliament decide. As to "[the Commission] supervising member states," well, it depends on what we are talking about. It does not

supervise the states on foreign policy or health policy or education. It is the guardian of the treaties in the sense that it verifies whether Member States respect the commitments they have taken in line with the treaties.

A convincing demonstration on governance

But let us turn to the positive side of the article. Schout is very convincing when he calls for an administrative model of the EU, looks at current EU policy challenges from a governance point of view, weighs the advantages of centralisation and decentralisation, talks about dealing with complexity and addresses the issues of monitoring and enforcement. I will just pick out the key points.

In a union such as ours, finding the right mix between action at the EU level and at national levels is indeed key. Schout considers that managing cooperation and creating networks with monitoring mechanism is preferable to delegation to Brussels. It is in this context that the Commission can and must function as a facilitator and coordinator.

Concerning policy areas, Schout comments on the economic governance of the Eurozone. There has been constant tinkering with the system over the years and the set of instruments "looks as impressive as a medieval cathedral". The truth is, however, that the EU has not found a solution to economic divergence, varying debt and deficit levels, and big differences in competitiveness. It is time for a fresh look at the issue and a more thought-through approach. The EU should look at the positive examples of governance over the past years and learn from them. Schout mentions the creation of a market for medicines, the opening of national aviation markets, the introduction of food standards, and, more surprisingly, the control of external borders. In all these areas, national institutions have become closely

[3] For a comprehensive description of the nature of the EU, see See Jaap Hoeksma, *The Democratisation of the European Union*, Eleven the Hague 2023: www.boomdenhaag.nl/webshop/the-democratisation-of-the-european-union

interwoven in European networks; they have kept their tasks but have had to bring their methodologies and supervisory structures into line with those of the best national institutions in the EU. This has helped preserve national ownership and increase trust in and among the Member States.[4] As Schout writes: "The tasks of member states have been enriched rather than delegated to the EU level... ... the added value of the EU level lies in managing interdependence in the implementation and enforcement of policies. The organization of interdependence between tasks that are centralised (those of the EU) and decentralised (for which the member states are responsible) must be carefully crafted."

Schout, on the other hand, is critical of the way the Recovery and Resilience Facility (RRF) has been implemented; he talks about a "missed opportunity" because the monitoring of national reforms is not organised through networks of national institutions. He calls for at last implementing the recommendation of the European Council of 2016 to establish National Productivity Boards and thus to ensure decentralised supervision of economic policies. Personally, I hope the upcoming Draghi report will say something about that rather than call for more central control! This is indeed a major challenge for the EU. In view of the enormous financing needs the EU faces, it should pursue the NextGenerationEU approach. However, if citizens feel that the RRF has not delivered as it should, it will be difficult to convince all Member States to accept the creation of new such funds.

The parts of the articles on centralisation and decentralisation are very convincing; according to the author, the former often ensures "efficiency" but not "effectiveness", while the reverse is true of (successful) decentralisation. So is the chapter on monitoring and enforcement, with its highly informative table on first- and

second-order control.

All these ideas are worth looking at and developing in a renewed reflection on EU governance. This should happen based on a sound understanding of the nature of the EU, of what it is and what it is not.

[4] Schout refers to the fact that some Member States do not trust themselves and hence favour central control. He calls this "centralization by default." It is unhealthy.