

Subsidiarity Early Warning System

I. The Subsidiarity Principle

A. Meaning and Definition

- The subsidiarity principle forms one of the fundamental tenets of EU law.
- It provides that a regulation or measure should, in principle, be made by the smallest possible organization unit that can guarantee meeting the goal. Hence the EU is only active when it can make a regulation more effectively than the member countries.
- This is meant to protect the decisionmaking capabilities of the member countries (and their states, regions, cities, and communities); it should guarantee citizens, maintain cultural, traditional, and historic differences, and counteract European centralization.
- Since the Treaty of Lisbon on 1.12.2009 the subsidiarity principle can be found in article 5 paragraph 3 of the Treaty of the European Union. This is it:

Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

B. Scope of Application

- The EU is only permitted to make measures outside of its exclusive legal jurisdiction (i.e. in areas in which the EU has the sole responsibility of lawmaking (customs unions, domestic markets, Euro monetary policy, joint fishing policy, joint trade policy)) if the following three requirements are met:
 1. The intended regulation will affect an area in which both the EU and the member countries are permitted to be active (shared lawmaking jurisdiction),
 2. the member country's actions are / would be inadequately sufficient and
 3. the goals of the Union are better realized at the level of the Union due to the scope or effects.
- If a measure taken by the EU lacks one of the three requirements, the parliaments of the member countries can establish that a violation of the subsidiarity principle has been made and impose a so-called subsidiarity objection.

II. The Subsidiarity Early Warning System

A. Exercise of the members' control rights via the Bundesrat and Bundestag

- The parliaments of the member countries have a formal control right for checking EU lawmaking proposals. Each member country is entitled to two votes in the assessment of a suggested EU legal act.
- In Germany, the Bundesrat and Bundestag exercise this control right. As each represents a branch of the German parliament, each receives one vote.

- The state governments are integrated into the process of subsidiarity control and can propose an imposition of a subsidiarity objection in the Bundesrat.
- The Landtag in Mecklenburg-Vorpommern contributes actively to the formation of opinions in the state government and can request that it initiate a subsidiarity objection in the Bundesrat (if applicable).

Yellow Card

If at least one third of the votes of all national parliaments disputes the consensus of a legislative proposal with the subsidiarity principle, the commission must review its suggestion.

Orange Card

If a draft is rejected with a simple majority of the votes and the commission decides to nevertheless maintain its suggestion, the draft is submitted to the legislator (European Parliament and Council), and there it can be rejected with corresponding majorities.

B. Integration of the early warning system in the process of the Bundesrat

1. Process of imposing a subsidiarity objection

- Drafts for acts of law are immediately communicated to the Bundesrat from the commission.
- The deadline for the imposition of a subsidiarity objection via the member countries' parliaments is 8 weeks from the admittance of the commission's communication to the Bundesrat.
- Within the 8-week deadline usually at least a committee discussion and a plenum of the Bundesrat are held.
- A discussion of content of the Bundesrat occurs only at the request of one or more states.
- Over one proposal on subsidiarity objections will occur outside the rhythm of sessions in either a special session of the committee or via written survey. The instrument "Europakammer"¹ can then be used for the resolution, which should be prepared as far as possible by the committees.
- The president of the European parliament, the council, and the commission of the Bundesregierung should be notified of a subsidiarity statement. Statements of content should instead only be directed at the Bundesregierung.

2. Schedule of a Bundesrat discussion

The following key data should be observed with regard to the schedule of a Bundesrat discussion:

- As far as a state intends to initiate the imposition of a subsidiarity objection, the matter should be punctually introduced to the corresponding committee sessions of the Bundesrat in order to enable a discussion.

¹ The Bundesrat has made a Europakammer according to article 52 paragraph 3a of the constitution. The Europakammer can pass resolutions vicariously for the Bundesrat if affairs in the European Union demand a quick reaction. The Europakammer is comprised of one member per state. A state's number of votes in the Europakammer is the same as its number in the Bundesrat.

- The committee week of the Bundestag occurs 14 days before the Bundesrat's session. After the conclusion of the committee consultation, any proposals for the imposition of a subsidiarity objection of the state can only be introduced in the form of a plenary proposal.

C. Integration of the state into the early warning system

1. Forwarding the early warning documents

- The early warning documents sent by the commission of the Bundesrat are electronically immediately forwarded to the agencies of the states at the government in Berlin.
- The state agency of Mecklenburg-Vorpommern forwards the electronic notifications about the early warning system to the ministry of internal affairs and Europe. The email notifications about the early warning system contain the following information:
 - Designation of the lawmaking proposal,
 - a statement of whether a printing for the Bundesrat's process has already been arranged, and (if applicable) a report of the Bundesrat printing number,
 - the beginning and the end of the prevailing 8 week deadline for the subsidiarity check as well as a statement for the Bundesrat plenary appointment within this time (which is thereby reachable),
 - a draft version of the lawmaking proposal as a unit.
- Through IM the early warning documents are immediately transmitted to the office of the internal and Europe committee of the Landtag within the framework of a notification process. Within the administration of the Landtag, the transmission occurs only so far as the professionally pertinent committees.
- Summaries of the drafts are posted with little time delay on the internet sites of the European Commission (and later those of the Bundesrat as well).

2. Landesregierung

- The investigation of a possible breach of the subsidiarity principle by an EU lawmaking project is performed professionally through the departments of the state.
- Also a part of the Landesregierung is the concept that if a lawmaking proposal contradicts the subsidiarity principle, the Landesregierung forwards this assessment to the Bundesrat committees (or directly to the Bundesrat, if applicable).

Since the Treaty of Lisbon came into effect, there has been an agreement between the Landtag and Landesregierung in which the Landtag is punctually informed if the Landesregierung intends to initiate a subsidiarity objection in a Bundesrat committee.

3. Landtag

- The representatives of the state, for their part, can advise the commission about the early warning documents in the Landtag committees.
- In this case they may question the professionally responsible departments.

- A committee issues a corresponding recommendation if it recognizes a breach of the subsidiarity principle.
- Provided the Landtag follows this recommendation, it can request that the Landesregierung introduce a subsidiarity objection to the committee consultations of the Bundesrat.
- After the date 14.6.2016, the constitution of Mecklenburg-Vorpommern was amended to allow the committee for the affairs of the European Union to be empowered through the Landtag to pass resolutions pertaining to affairs of the European Union in the place of the Landtag if a punctual resolution draft of the Landtag is not possible (article 35a of the constitution of Mecklenburg-Vorpommern).

4. Earlier proposals of the state

- Since the Treaty of Lisbon in 2009, only one proposal of the imposition of a subsidiarity objection was introduced to the Bundesrat by Mecklenburg-Vorpommern.
- The proposal concerned the suggestion for a guideline of the European Parliament and Council for the creation of a framework for maritime arrangement and integrated coastal zone management (COM (2013) 133 final; Ratsdok. 7510/13).
- The proposal was resolved in the Bundesrat, but the quorum of one third of the votes of the national parliaments for a yellow card was not reached.