Europe needs a subsidiarity early-warning mechanism

by Edmund Stoiber

Among the casualties of the EU constitutional debacle is an early-warning mechanism to protect subsidiarity. Edmund Stoiber, Minister-President of Bavaria, puts the case for re-introducing it, arguing that strict observance of the subsidiarity principle is vital to the EU's popular support.

The European Union is growing dynamically, and its attractiveness to would-be members is undiminished. Yet the EU's acceptance by its citizens is declining, witness not only the constitutional referenda in France and the Netherlands but also opinion polls throughout Europe.

There are several reasons for this decline. Low levels of knowledge about the EU is probably among them so it's important that in the future citizens should get more information about the EU. But on its own, that will not be enough. Many people still have to come to terms with the fast pace of enlargement, and are afraid that overstretch will mean that the EU is condemned to suffer permanently from excessive demands.

As well as enlargement, increasing regulation and bureaucracy from Brussels is playing a significant part in this sense of malaise. Citizens don't understand the need for EU regulation and can't see its added value. All they can identify is excessive regulation, red tape and extra costs.

Of course, not everything said about the EU's regulatory zeal and bureaucratic excess is correct. But nor is it completely fictitious. There are infringements of the principle of subsidiarity, and there are EU regulations that are too bureaucratic. It is therefore up to those of us whose particular concerns are to protect the EU against its critics to lead the fight against unnecessary red tape.

Germany's Bundesrat, the upper house in which the Länder are represented, keeps lists of EU projects deserving a reprimand for infringing the subsidiarity principle. Since early 2004, the Bundesrat has issued more than 30 of these reprimands for violations of the subsidiarity principle and in many cases it also criticised overregulation. For the most part, these reprimands don't relate to an EU project in its entirety, but to aspects of them and specific provisions they contain.

For instance, the EU's directive on flood risk management places an obligation on member states to develop plans for assessing flood risk and ensuring flood management in regions susceptible to flooding, however small the risk might be. But flood protection is primarily a national task, so under the subsidiarity principle, the EU's involvement should be restricted to cross-border catchment areas. Elsewhere, the EU has no need to involve itself in combating environmental noise, concerning itself with issues of urban development or indeed the quality of services in general. These are tasks for the member states and for regional and municipal authorities.

A great deal of what we might call bureaucratic strain has been placed on everyone affected by the EU's Flora, Fauna, Habitat (FFH) directive and on the amended directive for bird protection. The arrangements provided for by both directives are not only obstacles to growth and investment but are also the objects of severe criticism by citizens at local level.
The cross-compliance system introduced in the most recent EU agricultural reform entails a considerable extension of the tentacles of bureaucracy both for businesses and for administrators. Bavaria now intends to submit concrete proposals for simplifying the cross-compliance rules, and we will be using our best endeavours to make this issue one of the central subjects of the German Presidency in the first half of next year.

The proposed REACH chemicals regulation has also been severely criticised for placing excessive strains on business. Although negotiations have led to some substantial improvements in it, there remains a need for further simplification of its approval procedure.

Strict observance of the subsidiarity principle and improvements in EU-level legislation are crucial to reinvigorating citizens’ acceptance of the European project. It is a political imperative that whenever possible administrative tasks and decisions are taken at regional level or local level. That’s why Bavaria was such a strong advocate of enshrining the subsidiarity principle in the Maastricht treaty.

Performing these tasks as closely to the citizens as possible strengthens their ability to exert influence, and reinforces the capacity to act of those at higher decision-making levels because they can then focus on core tasks. This is particularly true in today’s enlarged EU. But theory is one thing, and practical experience quite another. There is almost always a temptation at the next level up to take charge of as much as possible, in direct contravention of the subsidiarity principle. Member governments at times also try to achieve through the EU things that for one reason or another they are unable or unwilling to do at national level.

Looking to the future, what we need to ensure that the EU concentrates on the tasks that can only be resolved through joint European policies is a change in outlook that will promote a genuine culture of subsidiarity. As a first step we need procedural safeguards for subsidiarity. I welcome the European constitutional treaty’s aim of strengthening the subsidiarity principle through introducing an early-warning mechanism for subsidiarity control, as well as a right of action for national parliaments and the Committee of the Regions whenever that principle has been infringed.

With the early warning mechanism for subsidiarity control the national parliaments would be directly involved in the European legislative process. The European Commission would transmit proposals directly to the national parliaments, and they would have the right to claim within six weeks that there has been a violation of the subsidiarity principle. If more than one third of the national parliaments were to do so, the European Commission would then be obliged to reconsider its proposal.

This early-warning subsidiarity mechanism is, in my opinion, of particular importance because the improved and timely involvement of national parliaments in EU projects is of crucial significance. It means that Europe’s national parliaments will no longer be required to implement provisions that they may, sometimes for very good reasons, believe to be wrong.

A greater debate by national parliaments of EU policies and projects is essential if they are to be more acceptable to Europe’s citizens. That is the reason I warmly welcomed the support given on the occasion of the European Subsidiarity Conference in St. Poelten in April 2004 by Austria’s Federal Chancellor Wolfgang Schüssel and EU Commission Vice President Günter Verheugen to the proposal for a subsidiarity early-warning mechanism to be introduced as soon as possible. This could in fact come into immediate effect without any treaty amendment. I believe that to do so would represent an important contribution to winning back EU citizens’ trust.

When the Bavarian Cabinet visited Brussels in March of this year, Commission President José Manuel Barroso showed his own receptiveness to this proposal, as did Finland’s Prime Minister Matti Vanhanen who is taking over the EU Presidency from Chancellor Schüssel in mid-year.
The decisive factor needed to reinvigorate citizens' trust in the EU will be primarily policies that promote growth and employment. And that is why this whole process of de-bureaucratisation that must be expedited as a top priority.

By simplifying and streamlining Community legislation, and improving regulatory impact assessment, the EU can make a key contribution to Europe's competitiveness. EU regulation that is as simple as possible will be like an anti-recession package. Cutting back on excessive bureaucracy nevertheless requires a very ambitious course of action. The aim has to be to achieve a marked reduction in the costs born by business and by civil society in general and that in turn will involve giving a clear political signal that Europe intends to introduce a comprehensive simplification of EU rules. This is a major challenge if we are to overcome the inertia and special interests that we encounter time and time again. But that is what we have to face up to at both EU and member state level and in the regions too.

At St. Poelten Günter Verheugen calculated that if EU regulation can be simplified, bureaucracy costs in Europe could be reduced by about 25%. And now the new federal government led by Chancellor Angela Merkel is also focusing on de-bureaucratisation and de-regulation as an important priority. I emphatically support that policy as Bavaria, with its system of centralised norm reviews, has been well-placed for that, and has already achieved some conspicuous successes by abolishing areas of state law that had become redundant.

But all these efforts at national and regional level must not be counteracted by excessive new EU requirements. Nor must member states, in transposing EU legislation, slap on additional loads. I have two comments to make on regulatory impact assessment. First, the specialists in charge of each project must not be placed solely in charge of impact assessment. To ensure objectivity we will need a kind of "Norms Review TÜV" at EU level to examine the reasons for each new piece of regulation and assess whether it would impose an excessive bureaucratic load.

Bavaria intends to participate itself in regulatory impact assessment by making its own contribution to important EU projects. Germany's Länder are already responsible for the enforcement and, to some degree, the legislative transposition of EU regulation. We will therefore be able to bring our administrative expertise and our own experience of the way players are affected at state level to the European decision-making process, and we intend to use this to help improve the quality of further EU legislation.

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