



The case for European localism

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SUMMARY:

Since it joined the EU in 1973, the UK has never shared the strategic vision of “ever closer union” that historically was the position of the six founders - but nor has it had an alternative strategy of its own. As a result, it has remained disengaged from Brussels, focusing on defensive tactics limiting the perceived damage of European legislation, rather than trying to steer the direction of the EU. This is a very unsatisfactory position for one of the EU’s main members.

But the UK now has an historic opportunity to drive forward its own strategy – European localism. It could command cross-party support in the UK, win traction across Europe – and change the future direction of the EU. European localism is taking the principles and rhetoric of localism widely endorsed at national level, and applying them at the European level.

The opportunity for European localism is the result of two developments:

- growing disillusionment with the principle of ever closer union across many member states, both among citizens and politicians
- the euro crisis forcing Europe to develop a more variable approach to European cooperation

At the same time, the principle of subsidiarity has been declared one of the founding principles of the EU in the otherwise centralising Lisbon Treaty. The euro crisis is the biggest crisis the EU has faced, with the original principle of “ever closer union” leading directly to financial and political turmoil. It has widened further the gulf between the EU’s leaders and its citizens, with support for the EU dropping to all-time lows in several countries, and growing assertiveness by member states wanting a new direction for the EU.

The government should use the current crisis to extend the principles of localism from a national level to the European level. The UK should position itself as the champion of European localism, creating a movement that counterbalances the drive for ever closer union, and gives powers back to member states, communities and individuals. The eurozone may pursue more integration to deal with its crisis, but that is not mutually exclusive with more localism: while many policy areas are in need of “less Europe”, some areas may need more Europe (subject to voters’ approval) as the EU moves towards a more flexible approach. Adopting and championing a European localism strategy will not only provide a new vision for Europe, but is also likely to reconcile the UK to EU membership - as well as reconnecting citizens across Europe with the EU. This briefing sets out a number of concrete proposals for how to achieve European localism in practice.

BACKGROUND: THE PROBLEM OF EVER CLOSER UNION AND UK DISENGAGEMENT

To make sure the shattering of Europe in the Second World War never happened again, the EU's founding Six adopted a strategic vision for ever closer union, and embedded integrationist momentum into the institutional architecture. It has largely achieved what it set out to do, centralising powers from member states to Brussels, and merging sovereignty among European nations over the past half century to a degree that few had thought possible. This approach has not fundamentally changed over the decades, has been common across most governments, and their engagement with the EU has been built up to support that strategy.

Building this vision required a "coercive" EU dominated by the belief that "one size fits all", where member countries are required to join all new projects and legislation, even if they do not wholeheartedly support them. For example, all EU members are required to join the euro when they are supposedly economically ready, with only the UK and Denmark winning the treaty right not to (Sweden does not have a legal "opt out" and is therefore in perpetual breach of its treaty obligations by not joining). At the same time, so-called Qualified Majority Voting has been extended to an ever growing number of areas, meaning less control over key decisions for national governments and parliaments.

The pursuit of ever closer union also required a one-way flow of power to the centre, with powers only ever being transferred from national governments and parliaments to EU institutions. The EU institutions and large parts of the EU leadership have always resisted any pressure to return specific powers to national capitals, and this has virtually never happened (Greenland pulling out of the EU in 1984 is a rare example).

The momentum for ever closer union has overwhelmed previous attempts to push "subsidiarity" - such as during the Constitutional Convention following the Laeken declaration (see below). It has also meant that EU integration has continued even after electorates have rejected it, such as in the referenda on the European Constitution/Lisbon Treaty in France, the Netherlands and Ireland.

The principle of ever closer union has been effective at binding Europe together, but it has many major shortcomings compared to localism. In many ways these are the same arguments against centralisation and in favour of localism at the UK level:

- it takes decision making ever further away from voters, leading to greater disengagement of citizens across Europe, and increasingly also of parliaments and governments. It clearly weakens local, regional and national democracy.
- although it can spread best practice, particularly among less developed member states, it can also entrench bad practice that is then difficult or almost impossible to change – for example, the Common Agricultural Policy. Centralised policy making is less flexible than localised policy making, and having an overarching strategy of centralising policy making can put the EU economy at a competitive disadvantage in a fast moving world. It also deters policy experimentation among countries (just as there is among states in the US) which can be critical to finding the best solutions.

- “one size fits all” policies can be economically inefficient, since they don’t take into account differing priorities in different countries. Having very high but expensive water quality standards might be rational in Germany, but could amount to a misallocation of resources in poorer member states where the money would be better spent on higher priorities.
- it is increasingly outdated. Logically, the ever closer union dynamic which was set up as a response to World War II cannot continue on all fronts indefinitely: centralisation has limits. In some policy areas (such as sales tax), the EU is already more centralised than the US or Canada, which are single countries. When it is no longer possible or practicable to centralise any further, ever closer union is a strategy that has no option but to change.

There are clearly areas where “more Europe” would be economically beneficial, such as a single European patent and a properly functioning services directive, but the euro crisis shows the limit of it as an overarching principle. This overwhelming one-way momentum can even be dangerous. Greece should clearly not have joined the euro, but there was so much political momentum for closer union that it signed up, which is now threatening to lead to a major political fall-out in Europe.

Since Britain could never sign up to the principle of ever closer union, it has been a reluctant member since it joined the EU, much to the frustration of other countries. It has been forever on the back foot, not sure whether it wants to engage at all, or engaging too late in established projects to make a difference.

Britain has been consistently reactive rather than proactive, focussed on damage limitation tactics rather than pursuing a long term strategy. From the agency workers directive to the AIFM hedge fund directive to the European Constitution/Lisbon Treaty, the UK is perpetually fighting a rearguard action, rather than pushing forward a positive agenda of its own. The UK ends up the grumpy person in the corner of the club house complaining about the rules, rather than the club chairman – or even a member of the club committee – writing them. It is an unsatisfactory position for one of the most powerful members of the EU to be in.

The lack of coherent strategy about what sort of EU we want, and what role we want to play in it, means that successive governments take differing positions, making it impossible for the UK to play a long game. John Major in frustration pursued an empty chair policy, while Tony Blair said famously that he wanted the UK to be at the heart of Europe, but not run by Europe. While that, at times, plays to a domestic audience, it does not act as a strategic rallying cry about the sort of EU we want.

Without a consistent strategy to focus national energies, Britain has failed to build up effective engagement with the EU. We don’t staff our EU operations properly, Whitehall doesn’t engage with Brussels effectively (with the odd notable exception), and the UK is unable to form effective political alliances with other countries to achieve its strategic ends.

This effective abdication by Britain of any central role in Europe means the EU too often ends up having an integrationist, pro-harmonisation, pro-regulation and rather protectionist stance. This is antithetical to the UK’s interests, thus

reinforcing Britain's disinclination to engage and inclination to be grumpy. This disengaged approach means the UK government has been unable to resist the institutional centripetal forces in the EU (the centralising tendencies built into policy-making machinery), and ministers end up losing countless behind the scenes battles as power continues to drift to the centre.

The only consistent strategy Britain has had is not about how the EU should operate, or its role in it, but about the size of it – we have been consistently pro-enlargement, from the first wave of Eastern Europe accession countries onwards (hoping that might lead indirectly to the looser EU we want). Britain has been successful at that strategy, which shows what Britain can achieve when it has a consistent strategic vision with cross-party support, and is prepared to show leadership. But this enlargement strategy does not directly address the more fundamental issues about the EU that are of interest to British citizens (who if anything are sceptical about enlargement itself).

In short, on the EU, Britain has tactics but no strategy – the noise before defeat. Like other large EU nations, we need strategy as well as tactics – and we should focus our engagement to deliver that strategy.

THE EURO CRISIS AS A TURNING POINT

Some would argue that the eurozone crisis has weakened the case for a European localism agenda, since the crisis is now driving euro countries towards more centralisation in the form of fiscal union, including possibly eurobonds (the mutualisation of debt in the eurozone) or even a Finance Minister, as proposed by ECB President Jean-Claude Trichet.

However, this is a superficial argument, which completely misses the political storylines that are now unfolding in parallel across Europe. While it is true that more fiscal integration might be deemed necessary for eurozone countries, this is not mutually exclusive with the localism agenda – on the contrary.

First, as already noted, the crisis has discredited ever closer union as an overarching principle for European cooperation. In its wake a growing number of citizens across Europe are now feeling disillusioned with the entire European Project, with populist, anti-EU parties on the rise from Helsinki to Vienna.¹

In particular, while Germany remains unambiguously committed to Europe, as the euro crisis continues, public and media opinion in the country is slowly starting to question the current direction of the EU.² Dirk Schümer, the Vienna correspondent for the Frankfurter Allgemeine Zeitung captured the mood well when he recently wrote:

1 For example, following its decision not to be part of the new Coalition government in Finland over opposition to the eurozone bailouts, the anti-euro True Finns party is now the most popular party in the country according to recent polls, see *Helsinki Times*, 'True Finns top poll', 15 August 2011 <http://www.helsinki-times.fi/htimes/domestic-news/politics/16323-true-finns-top-poll-yle-.html>

2 For example, a European Commission Eurobarometer poll from last year showed that the number of Germans who considered the EU "a good thing" fell by 10% in less than a year, see *European Commission*, 'Public opinion in the European Union', standard Eurobarometer 73, August 2010, page 20 http://ec.europa.eu/public_opinion/archives/eb/eb73/eb73_anx_en.pdf

“The EU was the best thing that has happened to Europe since the fall of the Roman Empire. Throughout the years it has however turned into a demon, uncontrollable, impossible to vote away.”

This fledgling German euroscepticism – albeit in a very different form to that existing in Britain – is a stark reminder that the EU urgently needs to reconnect with its citizens.

Secondly, the chaotic, behind-closed-doors decision making, which has characterised EU leaders’ behaviour in this crisis, is also fuelling a new assertiveness among European parliaments, increasingly flexing their muscles against EU policies. At one end of the spectrum are parliaments in stronger countries that have to explain to voters why, despite promises made, their governments are now forced to bail out weaker states. Such trends are particularly clear in assemblies in Germany, the Netherlands, Finland, as well as Eastern European countries such as Slovakia. For example, Slovak parliamentarians forced their government to break its original commitment that it would contribute to the bailout of Greece (though it contributed at a later stage).³

At the other end of the spectrum are parliaments in weaker economies such as Greece and Portugal, which have been forced to see key decisions on spending and taxation outsourced to officials in Brussels, Berlin and Frankfurt.⁴ Outside the eurozone crisis, the Danish parliament has questioned some aspects of the Schengen agreement on open borders, for example.

This should serve as a clear warning shot: if it continues to sideline parliamentarians and voters, then the EU will risk a massive backlash, as citizens look to more nationalist and protectionist political alternatives. Pushing more localism and increasing the powers of national parliaments is not only desirable, but necessary if EU countries wish to counterbalance the growing discontent with the EU amongst parliaments and voters alike. For eurozone countries, more localism in some areas of EU policy may also serve as quid pro quo for voters, who, should it come to that, will want assurances in return for accepting more integration in fiscal policy.

Thirdly, the crisis is inevitably throwing up more variable geometry in the EU, with countries having little choice but to integrate at different speeds and in different ways.

Responding to the opposition that the recent Franco-German proposal for a Financial Transaction Tax and a constitutional cap on spending for all eurozone members generated in many capitals (including those of eurozone countries), German Foreign Minister Guido Westerwelle said that any member states that don’t implement the Franco-German plans “shouldn’t be allowed to stop the rest” from

3 See Anthony Browne, ‘Plan overboard! The euro crisis has prompted national parliaments across the continent to dump their Euro-federalist baggage’, essay published in the *Spectator*, 23 July 2011 <http://www.spectator.co.uk/essays/all/7112788/plan-overboard.html>

4 For more on the eurozone bailouts, see *Open Europe*, “Abandon ship: Time to stop bailing out Greece?”, 21 June 2011, <http://www.openeurope.org.uk/research/greece2ndbailout.pdf>, *Open Europe*, “A house build on sand? The ECB and the hidden cost of saving the euro”, 6 June 2011, <http://www.openeurope.org.uk/research/ECBandtheeuro.pdf>, and *Open Europe*, “Stopping the rot? The Portuguese bailout and why it is better to restructure”, 24 March 2011, <http://www.openeurope.org.uk/research/portugalrestructure.pdf>

doing so. He also added that “there should be more differentiated co-operation”.⁵

This is an implicit acknowledgement that, in order for it to work, the EU simply needs to be broken down into smaller units – one-size-fits all is no longer practical or realistic. In principle, this type of flexible approach to European co-operation sits perfectly with a localism agenda – sometimes merging policies and institutions, at others keeping them separate, as national democratic preferences and local circumstances dictate.⁶

In parallel with the eurozone crisis, there is a growing feeling around Europe that the EU – from its foreign policy to its budget – is simply too unwieldy to succeed in the 21st century. The Lisbon Treaty was sold as a document to address this and make the EU more “streamlined” and effective. But as noted before, it has failed to deliver.

Former French Prime Minister Edouard Balladur put this in particular pessimistic terms:

“Europe at 27 is doomed to confusion and failure. It suffers from problems that the Lisbon Treaty has failed to correct. Lack of authority: the 1950s structure, with the [European] Parliament, the Commission and the European Council, being too heavy...Lack of coherence: the 27 member states have very different social and juridical regimes.”⁷

At the same time, recent Franco-German proposals actually envisage a limited role for the European Commission in the eurozone’s economic governance, with the eurogroup’s 17 members instead meeting separately. In jargon, this is known as intergovernmentalism, often described as the opposite to federalism. It still involves a clear element of supranationalism – and a risk that the Franco-German axis will gain disproportionate influence at the expense of smaller nations – but it puts member states, rather than the centralising Commission, the federalist European Parliament or the European Court of Justice at the centre. This matters because British reflexes tend to favour intergovernmentalism modelled around decisions made by sovereign states rather than the Brussels-based institutions. The situation in Europe remains extremely fluid, but if used strategically, this potentially evolving model can be used by a British government as a stepping stone towards localism (see below).

A NEW STRATEGIC VISION

With Europe hungry for fresh ideas for how to connect citizens with the EU, Britain has an historic opportunity to develop and pursue a new long term strategic vision for Europe, which could generate cross-party support, and act as a rallying cry for other countries.

The UK should become the champion of “European localism” – rather than accepting non-stop centralisation, it should forcefully make the case that the EU

5 Quoted in the *Financial Times Deutschland*, ‘Berlin bringt Spaltung der EU ins Spiel’, 17 August 2011, <http://www.ftd.de/politik/europa/nach-gipfel-von-paris-berlin-bringt-spaltung-der-eu-ins-spiel/60092504.html>

6 See also Mats Persson, “After this crisis, Britain may get the kind of EU it wants”, *Guardian Comment is Free*, 29 September 2011, <http://www.guardian.co.uk/commentisfree/2011/aug/20/britain-germany-economic-plans>

7 Interview with *Le Monde*, ‘Edouard Balladur: L’Europe à 27 est vouée à l’échec’, 25 September 2010 http://www.lemonde.fr/politique/article/2010/09/25/edouard-balladur-le-climat-politique-est-malsain_1415826_823448.html

should make decisions at the most effective and democratically accountable level, and devolve powers where centralisation has gone too far. Rather than having ever closer union, we need a flexible EU that (to paraphrase former Dutch Commissioner Frits Bolkestein) centralises when necessary and devolves when possible. In populist terms, we must ensure that the EU doesn't dabble in areas that are best left to national (or regional or local) governments. Britain has a unique opportunity to pursue – and implement – a localism strategy with real teeth, which could alter the long term direction of the EU.

For each policy, there is an optimal spatial and democratic level at which to apply it; but history, vested interests, personalities and institutional centripetal forces mean policies are often made at the wrong level. At some point, it is inevitable that the EU's centralising dynamic has to transmute into a more sustainable and workable dynamic of ensuring that policies are decided at the most effective level, whether local, national or continental. Claiming otherwise – which both federalists and hardcore eurosceptics tend to do – is to argue that the EU is the first political entity in history that can perpetually move in only one direction.

This is not as controversial as it might sound. Localism is a political movement and strategy to devolve power as far downwards as possible. In the UK, it has no legal or constitutional underpinning, but that is not the case at the EU level – European localism is constitutionally underpinned by the under-used and under-enforced legal principle of subsidiarity, which is now embedded into the EU treaty and protocols. However, this has not been accompanied by any effective machinery or political will to ensure that subsidiarity is embedded into actual EU decision making. The EU has powerful centralising policy machinery, but so far very limited devolutionary machinery to counterbalance it.

According to the official EU definition⁸, the principle of subsidiarity means that:

“the Union shall act only if and in so far 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.”

However, there are many areas where the EU is making policies which could clearly be sufficiently achieved by member states:

- Working Time Directive controlling, inter alia, working hours of hospital doctors across Europe
- Harmonisation of VAT levels on domestic gas and electricity, and of domestic water quality standards, in every EU state
- Directive 2003/20/EC requiring children under 12 to have car safety seats in all EU countries
- The blanket ban on traditional tungsten light bulbs in every EU country
- The Agency Workers Directive, giving agency workers in every EU country the same rights as full time workers after 12 weeks in the job

⁸ See Article 5 of the consolidated version of the Treaty on the European Union

In the 1980s, Margaret Thatcher, then Prime Minister, was fond of espousing principles of subsidiarity, but at the time it had little traction amongst other countries. A 2005 House of Lords European Union Committee report into strengthening national parliamentary scrutiny of the EU heard evidence that “so far subsidiarity had done little to shake existing cultures of law making at EU level”⁹, blaming indifference or antipathy on the part of the EU institutions. Not much has changed since. This has led many eurosceptics to become disillusioned with subsidiarity as a principle, concluding that it is a false hope that does not deliver results. But that is because it was before its time politically in Europe, and not pursued strategically by the UK or any other nation.

However, the pressure for the EU to give due weight to subsidiarity has grown considerably in recent years, as its powers have both deepened and widened to almost all policy areas. To placate increasingly vocal concerns, subsidiarity was included in the 1992 Maastricht Treaty, and in the 2001 Laeken Declaration¹⁰ by EU leaders, which decided that a committee should look at how the EU could reconnect with the citizens, and initiated the process that ended up with the Lisbon Treaty. Nick Clegg, now UK Deputy Prime Minister but then an MEP, contributed to the debate by publishing a pamphlet calling for the EU to stop overstretching itself and concentrate on core activities.¹¹ However, the process, known as the Constitutional Convention, became dominated by integrationists, sidelining those pushing for more localism. Far from returning powers to member states, the resulting Lisbon Treaty handed over many new ‘competencies’ to the EU.

Despite this, the Lisbon Treaty did for the first time officially recognise subsidiarity as a founding principle of the EU. It also includes an “early warning mechanism” provision for national parliaments to send a “yellow card” and “orange card” to the Commission, if sufficient numbers say that EU legislation breaches the principles of subsidiarity. The European Commission has a stated policy of openly encouraging national parliaments to get involved in EU decision making, and Commission President José Manuel Barroso has written¹² to them urging them to engage.

In September 2006, the EU started voluntarily sending proposals for new laws for subsidiarity (and other) checks to national parliaments, a process that was later statutorily enshrined in the Lisbon Treaty. In 2010, the Commission sent 82 draft proposals to national parliaments for subsidiarity checks and received back 211 opinions related to these proposals¹³. Of these, 34 explicitly argued that a proposed EU law (or part of it) violated the subsidiarity principle.

9 *House of Lords, European Union Committee, ‘Strengthening national parliamentary scrutiny of the EU – the Constitution’s early warning mechanism’, 14th report of session 2004-2005, page 21*
<http://www.publications.parliament.uk/pa/ld200405/ldselect/ldEUcom/101/101.pdf>

10 For more details, see the website of the Committee of the Regions,
<http://portal.cor.europa.eu/subsidiarity/whatis/Pages/SubsidiarityfromMaastrichttoLisbon.aspx>

11 Nick Clegg, ‘Doing less to do more: A new focus for the EU’, Centre for European Reform essays, August 2000,
http://www.cer.org.uk/pdf/e173_less_todomore.pdf

12 The full text of Barroso’s letter is available here,
http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/docs/letter_en.pdf

13 In total, in 2010 the Commission received 387 submissions from national parliaments as part of the ‘political dialogue’ launched in 2006, including the 211 which were specifically subsidiarity-related, see *European Commission, ‘Annual report 2010 on relations between the European Commission and national parliaments’, page 3*
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0345:FIN:EN:PDF>

The UK parliament has been very slow at engaging in this process. In 2009 out of the hundreds opinions submitted by parliaments, the House of Commons did not submit a single one, while the House of Lords submitted 14.¹⁴ In total, last year the UK parliament submitted 15 opinions, five of which were ‘reasoned opinions’ objecting to a law on subsidiarity grounds (three from the Commons and two from the Lords).¹⁵ While this clearly is a step forward, you would expect more from a parliament largely claiming to be in favour of EU reform and bringing powers back to citizens.

But while the legal principle of subsidiarity has been mainstreamed in the EU, there isn’t the institutional machinery or political will to turn the rhetoric into reality – to turn it into a drive for localism. The views of the national parliaments have been sought but then comprehensively ignored by the European Commission – the hundreds of submissions from national parliaments have not led to a single change in policy. In its latest assessment¹⁶ it admits that:

“As regards the improvement of policy formulation, it is true that it might not always be easy to measure the concrete impact of national Parliaments’ opinions on a given final legislative act.”

The Commission also produces Impact Assessments (IA) meant to consider whether a given proposal breaches the subsidiarity principle. In practice, however, the Commission is effectively responsible for both drafting the proposal and producing the IA, which unsurprisingly consistently produces IAs with a bias for the Commission’s preferred option. This means that there is no strong filter at the very beginning of the EU’s policy-making process.¹⁷

The Committee of the Regions (an EU body which is based in Brussels) has been designated as the guardian of subsidiarity, and has even set up a Subsidiarity Monitoring Network.¹⁸ But apart from having no impact on actual policy, the CoR is based on the flawed logic that more powers need to be centralised in Brussels in order for them to be devolved to regions.¹⁹

Similarly, a committee of national parliaments – the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC)²⁰ – was formed under the Amsterdam Treaty of 1997, but it is extremely weak, and has trouble being taken seriously. Part of the problem is that COSAC is secretariated out of the European Parliament, an institutionally centralising organisation which sees national parliaments as rivals.

14 *European Commission*, ‘Annual report 2009 on relations between the European Commission and national parliaments’, page 11 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0291:FIN:EN:PDF>

15 *European Commission*, ‘Annual report 2010 on relations between the European Commission and national parliaments’, pages 11-12

16 Annual Report 2009 on Relations Between the European Commission and National Parliaments http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npa/index_en.htm

17 See *Open Europe*, ‘Still out of control? Measuring eleven years of EU regulation’, second edition, June 2010 <http://www.openeurope.org.uk/research/stilloutofcontrol.pdf>

18 See <http://portal.cor.europa.eu/subsidiarity/pages/welcome.aspx>

19 The CoR has not once used its right to refer cases to the European Court of Justice for breaching the principle of subsidiarity.

20 More details on COSAC are available on its official website, <http://www.cosac.eu/en/cosac/>

There is a growing consensus – supported by academic research – that the provisions to ensure subsidiarity in the Lisbon Treaty and elsewhere will in reality have little effect. A recent 2010 Spanish study into why it wasn't working well concluded:

"It will probably remain a rather harmless procedure, with only marginal impact on the EU's legislative process. After all, why else would national governments have been so willing to introduce it in the first place."²¹

The study stated that national parliaments would probably only take the "early warning mechanism" seriously if it was strengthened, in particular by giving national parliaments a "red card" option which enabled them to veto Commission legislation if there was a significant majority opposed. This option had been discussed in the Constitutional Convention, but ruled out as likely to have too much impact. The Commission's reluctance to genuinely consider the advice of national parliaments illustrates that European localism is unlikely to materialise in practice as long as it remains the responsibility of EU institutions to enforce it.

Prominent European figures have been expressing frustration that there is no real subsidiarity in the EU. Roman Herzog, the former German president, has spoken repeatedly on the issue, proposing a European Subsidiarity Court to counter the statutory requirement for the European Court of Justice to pursue "ever closer union". In a paper last year, he wrote:

"Judicial decision-making in Europe is in deep trouble. The reason is to be found in the European Court of Justice (ECJ), whose justifications for depriving Member States of their very own fundamental competences and interfering heavily in their legal systems are becoming increasingly astonishing. In so doing, it has squandered away a large part of the trust it used to enjoy."²²

Reviewing some of the ECJ's decisions, Herr Herzog concluded:

"They show that the ECJ undermines the competences of the Member States even in the core fields of national powers."²³

European localism is also a strategy that would find considerable support from other European governments, both national and regional. Scandinavia, the Netherlands, most of Eastern Europe and powerful regional governments such as the German Länder are frustrated with EU legislation that dabbles in what they clearly believe are their own affairs. British ministers are not alone in being frustrated by how much they have to defer to Brussels in developing policies. As the referenda on the European Constitution showed in Ireland, France and the Netherlands, most of the European public resent the seemingly irresistible

21 Tapio Raunio, 'Destined for irrelevance? Subsidiarity control by national parliaments', Real Instituto Elcano, Working Paper 36/2010, 19 November 2010, http://www.realinstitutoelcano.org/wps/wcm/connect/0533e78044bdf4948f018ff55cb546a4/WP36-2010_Raunio_National_Parliaments_Subsidiarity_Control.pdf?MOD=AJPERES&CACHEID=0533e78044bdf4948f018ff55cb546a4

22 Roman Herzog and Lüder Gerken, 'Stop the European Court of Justice', op-ed published by FAZ, 8 September 2008, http://www.cep.eu/fileadmin/user_upload/Pressemappe/CEP_in_den_Medien/Herzog-EuGH-Webseite_eng.pdf

23 *Ibid*

one-way drift of power from national governments to a transnational government that is unaffected by elections. As we note above, recent opinion polls show that public scepticism towards the EU has been dramatically spurred on by the eurozone crisis.

Therefore, subsidiarity is not a eurosceptic little England response trying to clip the wings of EU, but a considered international position endorsed by strong supporters of the European Project and enshrined in the treaties.

The primary reason that the principle and rhetoric of subsidiarity has not been turned into real localism is that no member state has acted as a political champion to drive it through, proactively pursuing a localism strategy. Should it invest the necessary political capital, as one of the EU's "big three", the UK has the size and clout to make European localism happen. In policy terms, it is an open goal.

It is a strategic vision which is potentially capable of garnering strong-cross party support in the UK; there are few mainstream politicians who disagree with it in principle. It is in line with the devolutionary principles of the Conservative-Liberal Democrat coalition government, and has in the past been supported by leading Liberal Democrats and Conservatives, as well as Labour politicians. While the Conservatives might embrace it because it enhances the role of national parliaments, the Liberal Democrats can embrace it because it is about making the EU work better and increasing its proximity to voters. The government's approach to centralisation and localism should be as sophisticated at the international level as it is at a national level. It is inconsistent to argue for centralisation at the continental level, but decentralisation at the national level.

But such a strategy will only work if it is clear that it is about making the EU work better, rather than a fundamental attack on the idea of European cooperation. While pursuing a European localism strategy, Britain should make clear that it has no desire to leave the EU in the short-term. However, the UK government should also be honest about the dangers of not closing the gap between the EU and its citizens – according to some opinion polls, a majority of British voters would vote to leave the EU already today.

For all the EU's shortcomings, membership has brought benefits to Britain, and the EU has benefitted Europe as a whole, not least through enlargement to the former communist countries. But the cost-benefit analysis of EU membership is no longer so clear. Only by pursuing a strategy of practical European localism will the UK's place in the EU be guaranteed in the long-term.

AN ACTION PLAN TO ACHIEVE EUROPEAN LOCALISM

The government needs to adopt an action plan to refine its strategic vision for Europe, and the steps needed to implement it, ensuring buy-in from other countries. At the same time it needs to strengthen its engagement with Europe, so that it has the traction to deliver real localism.

The end game is likely to be that the UK should lead the formation of a “localism bloc” of EU countries dedicated to pushing localism. They would form amongst themselves a consensus view on whether any particular piece of EU legislation complied with the principle of subsidiarity, and had to be carried out at European level. This is discussed at length below.

The government should engage in a series of actions to deliver the strategy:

Making the arguments

1. A first step is to generate thought leadership in this area, via seminars with EU think tanks, encouraging them to publish reports, roundtables with diplomats from supportive countries, publication of a European white paper. Depending on how high profile an issue they want it to be, the Europe Minister, Deputy Prime Minister and Prime Minister could also outline the vision in speeches. While being supportive of the EU, the government should start reversing the assumption that all power must flow irreversibly to the centre. It should make a coherent, pro-democracy, pro-flexibility case for powers to be held at national level, or devolved from the EU to national governments where they have been centralised already. No government or collection of governments has previously put real pressure on the centralising assumptions of the EU, including ideas for how to devolve powers back to member states.
2. Hold a conference in London of like-minded countries and parliaments (similar to the conference of Nordic nations), and then follow-up with regular meetings and seminars. Tony Blair achieved progress with the Hampton Court summit in 2005 when the UK held the EU presidency; but you don't need a presidency to hold a conference.

Actions the UK can take unilaterally

3. Specific staff in the FCO should be assigned to lead on European localism (perhaps forming a European Localism Unit, or a Subsidiarity Unit), and liaise with other government departments affected by EU legislation, to help mainstream this way of thinking across Whitehall.
4. The government should subject all significant EU proposals to a robust subsidiarity test. In their evaluation of EU proposals, the government's impact assessments do in theory assess whether the subsidiarity principle has been met, but in practice, this almost always amounts to a box-ticking exercise. If a proposal does not pass this test, the government should notify the UK parliament (and potentially other European parliaments and governments) – and both should object to the proposal.

5. The UK government should actively and independently assess and follow up the submissions by the national parliaments to the European Commission, and publicly hold the European Commission to account for its lack of response to them.
6. The House of Commons should actively make submissions to the European Commission over its concerns about subsidiarity. Although the last year has seen some improvements, not engaging properly in this process means the UK parliament cannot legitimately complain about being ignored. It would be better to make submissions, complain that the Commission has not listened, and insist that the UK government follows up.
7. The government should make it easier for the Houses of Commons and House of Lords to make submissions on breaches of subsidiarity, by lending expertise and official capacity, or even supplying draft submissions. The UK government has taken some positive steps by giving the Commons EU Scrutiny Committee more time and better possibilities to assess individual proposals, but more is needed.
8. Strengthen the role of the House of Commons by copying Danish practice, and allowing it to set the negotiating mandate of ministers before they go to Brussels – i.e. enable MPs to debate and decide a position on proposed EU legislation before ministers cast the national vote on it in the Council of Ministers, rather than expecting parliament just to rubber stamp post facto whatever ministers have agreed in Brussels. This will lead to dramatically increased British interest in European legislation, because it will be actively debated in parliament before it becomes a *fait accompli*; it will strengthen ministers' negotiating hand in Brussels (because they can point to how their parliament voted); and it will make the legislative relationship between Brussels and London far more transparent.
9. Give the House of Commons EU Scrutiny Committee the power to approve the UK appointment to the European Court of Justice, making respect for subsidiarity a pre-condition. ECJ judges have great power, with the ability to overrule democratically elected governments, and yet are largely under scrutinised. All EU countries can appoint a judge to the ECJ, and when the UK government does so it should be an open and transparent process supported by parliament, just as Congress has a role when the US President appoints judges to the US Supreme Court.
10. The government should ask its lawyers to look at the possibility of taking the European Commission to the European Court of Justice for breach of subsidiarity, and take forward any actions with a reasonable prospect of success. The ECJ is required to uphold the Treaties of the European Union, which now for the first time incorporate the legal principle of subsidiarity. This opens up the possibility that the UK government could take the European Commission to the ECJ for breaching the subsidiarity clause of the Lisbon Treaty, reversing the practice of the Commission taking the UK government to the ECJ for not sufficiently harmonising its laws.

11. As well as trying to embed the legal principle of subsidiarity for new policy making, the government should push for devolution of existing policies from Brussels to member governments. They should draw up a wish list of policies that should be devolved, prioritise them in terms of importance and chances of success, and develop a strategy to get the powers returned, using whatever tools are available. Prime candidates for the wish list include regional development policy, working time legislation, reducing the scope of the European Arrest Warrant, insurance policy and a range of other areas.
12. The government should use its legal rights to repatriate powers unilaterally, which don't involve any treaty changes. Under the Lisbon treaty, in 2014, the UK government can decide to repatriate some 90 EU justice and home affairs laws, meaning that these no longer would be applicable in the UK. If the government instead decides to remain signed up to these laws, ultimate jurisdiction over them would for the first time be transferred to EU judges, meaning yet another transfer of powers from Westminster to Brussels and Luxembourg.

Actions the UK can take with other countries

13. Pursue measures to strengthen the co-operation between national parliaments which have a clear and underutilised collusion of interest in promoting localism. This should start with the formation of an Interparliamentary Task Force on Localism, which would re-visit the conclusions in the Laeken Declaration – this time with a genuine view to creating an EU that operates far closer to citizens. The Task Force would act independently from the EU institutions and national governments and would consist of three or four representatives from several national parliaments, and possibly include regional representatives such as from German Länder. While not necessarily including all parliaments, the Task Force should feature members from the UK and Germany - two of the biggest net contributors to the EU budget. It should be looking at how:
 - a. the EU's treaty commitment to subsidiarity is operating in practice, and whether all policy making abides by the principle of subsidiarity – and highlight areas where it doesn't;
 - b. the EU institutional machinery can be strengthened to make sure subsidiarity is turned from rhetoric and cliché into reality – for example by introducing a “subsidiarity court” – and whether responsibility for any policy areas should be returned to national governments and parliament
14. The government, together with other member states and national parliaments, should campaign for a “red card” mechanism to be brought in, whereby if two thirds – or in particularly sensitive areas half - of national parliaments express concerns about EU legislation breaching subsidiarity principles, then the EU would have to abandon the legislation. This should

apply to Commission proposals as well as ECJ rulings. This is likely to encourage far more engagement by national parliaments in the process. The government should also lobby for national parliaments to be given 16 weeks – rather than just 8 weeks at present – to lodge reservations about EU legislation.

15. In parallel with the Interparliamentary Task Force on Localism or separately, the UK and other reform-minded governments should seriously consider and explore Herr Herzog's proposal for a European Subsidiarity Court – how could it work, what would the implications be, and how could it be implemented. This should include ideas for how to introduce a “reverse infringement procedure”. At present, the Commission can take member states to court for breaching EU law or not implementing EU directives properly. The reverse should also be possible: member states taking the Commission to court for breaching subsidiarity or over-stepping its mark. An independent European Subsidiarity Court would be necessary if it is not possible to legally enforce subsidiarity through the ECJ as discussed in point 11. The very fact that governments are considering a European Subsidiarity Court might make the ECJ more focussed on its responsibilities to uphold the treaty-enshrined principle of subsidiarity.
16. The government must push for a “better regulation” agenda and seek to strengthen the filters at the earliest stages of the EU's decision making process. This should include a strong, independent European Impact Assessment Board, with the mandate to send proposals back to the Commission if lacking a proper justification for why the legislation belongs at the EU-level rather than nationally.²⁴
17. On most policies, the UK and allied governments should push for an end to “coercive Europe”, and push instead for a multi-level (variable geometry) Europe, making the case that not every member country should be required to sign up to every policy. Politics has already dictated different national arrangements with high stake policies such as the Euro and Schengen, but could apply painlessly for a far greater range of policies (it is an absurdity of EU harmonisation that Scottish universities can demand tuition fees for English students, but are banned from charging French students. If the UK can survive without harmonisation on this issue internally, the EU certainly can). The Lisbon Treaty already allows for so-called “enhanced cooperation”, whereby a group of member states are free to pursue a policy separately if not all 27 are able to agree. This has already happened in areas such as family law and an EU patent. However, there is no reason why this cannot work also in reverse, with a group of countries deciding to repatriate powers or EU laws, even though it may not be politically possible for all 27 countries to do so.

²⁴ For more proposals for how to reform the EU's regulatory process, see *Open Europe*, ‘Still out of control? Measuring eleven years of EU regulation’.

18. Ultimately, the UK should consider forming a localism bloc of countries (see next section).

Increasing the UK's traction in Europe

Britain will only successfully implement such a strategy if it engages more effectively with the EU in future than it has in the past. Tony Blair made a barnstorming speech²⁵ to the European Parliament after the collapse of the European Constitution, but failed to follow through largely because the UK didn't have the right engagement with Brussels, and Brussels didn't have the appropriate institutional machinery. Having a clearer vision of our mission will naturally lead to more effective engagement, but there are specific steps the UK should take:

19. To punch our weight, the UK government should staff UKREP and the Commission to a level and grade comparable to those of other EU countries. The UK has less than half the EU staff you would expect given its population. Ensure that UKREP has expert staff from across Whitehall, and is not FCO-dominated; but also ensure that the staff are focussed on the localism strategy.
20. To ensure proper appreciation of the EU throughout Whitehall, make experience of Brussels a pre-condition to promotion. Few Whitehall civil servants have any experience of how laws are made in Brussels, despite the fact that this is where a very large proportion of our laws come from. At present, time in Brussels is a career dead-end for civil servants; that must be reversed. Reinstating a European fast stream is not enough – it should be ramped up significantly, and also extended to the public sector bodies such as the Bank of England and Environment Agency.
21. Exploit the national networks in Brussels. The UK does very little to exploit the natural loyalties and interests of British staff in Brussels, in stark contrast to other EU countries which systematically exploit their national networks, liaising regularly with staff who are working there. It is arguable that this should be up to and including our Commissioners: other countries such as France are far more direct in harnessing their Commissioners to their national interest than the UK is.
22. The government should pro-actively pursue long term strategic political relations with other like-minded countries, primarily through regular one to ones at ministerial level, but also deploying summits and conferences as appropriate.

²⁵ The full speech is available here, <http://www.guardian.co.uk/politics/2005/jun/23/speeches.eu>

THE EU ARCHITECTURE NEEDED TO DELIVER THE LOCALISM STRATEGY

Britain's new strategy towards the EU could lead to it having a more flexible engagement with the EU than it has had in the past. Since it joined the EU in 1973, Britain has tried a mix of two types of intergovernmental engagement:

- (i) Seeking to be in a triumvirate (UK, France and Germany) – but this is unstable because the strategy of the other two has traditionally been to continue their long held integrationist theme, which inevitably conflicts with Britain's stance (though the eurozone crisis has also strained the Franco-German axis and pushed it in a more intergovernmental direction).
- (ii) Forming more ad hoc coalitions on specific issues – this will be business as usual as far as France and Germany are concerned. It is also tactical and not strategic, and so both inherently unstable and unlikely to deliver significant results

The combination of these two has had limited impact on the general direction of travel. But there is a third approach, which the UK has barely tried:

- (iii) Seek to form a stable bloc to develop and then drive a new long term, more open, localist strategic vision in contrast to the integrationist, protectionist hegemony.

The EU has not before had a bloc of national governments collaborating to resist the centralising tendencies of the European Commission, the European Parliament, and the European Court of Justice. The drift of power in the EU is always to the centre, partly because of its institutions such as the Commission and Parliament that are inherently centralising, but also because the centralisers are organised, whereas the decentralisers such as the UK, the Netherlands and Sweden are not organised.

This is more likely to achieve Britain's interests. What the UK needs to ensure is that rather than resulting in conflict, the approach ends up in a stable stand-off, with mutual recognition of each other's stance. The best outcome would be that the integrationist core comes to accept the localism arguments, and no longer sees them as a threat to the existence of the EU, but rather an essential ingredient for its success and workability.

The new localism sub-club would have to take account of how the EU's institutions have evolved. The Council of Ministers is one of four centres of power (including the European Court of Justice). The European Commission has always been a rule-making machine, driven by the treaties to enhance integration; but it is politically weaker now than it has been for many years (though it also gained implementing powers under the Lisbon Treaty under the so-called Comitology procedure), while the euro crisis has made the Council stronger. However, this is partially offset by the European Parliament, which is now a key player with a sense of mission to integrate.

In summary, the government should work to form a new sizeable, durable, and strategic EU bloc, whose aim is to promote localism – through every piece of legislation and future structural change.

CONCLUSION

The euro crisis, treaty changes and changing sentiment across Europe have presented the UK with an historic opportunity to successfully champion a European localism strategy to counter the EU's founding principle of ever closer union. It would use the legal principle of subsidiarity, now enshrined in EU treaty, to underpin a movement to push decision making and policy making closer to citizens across the EU. This is a strategy that could be embedded in the UK political system, and adopted across the political cycles. Just as France has an EU strategy irrespective of their current government, so would the UK.

The UK doesn't want to be out of the club, but it doesn't like the direction that the club is heading in. The question is whether a larger, frequently late to the table, member can persuade the club to shift its goals? The answer is yes - if it's done well, sustained over many years and decades, and in the spirit of making the club work better – and surviving its current crisis of confidence – rather than wrecking it. Having a decisive say in the direction of the EU is also likely to reconcile the UK with being in the EU. It would no longer be the grumpy club member in the corner complaining about the rules, but one of the committee members writing them.

About Open Europe

Open Europe is an independent, non-party political think tank which contributes bold new thinking to the debate about the direction of the European Union.

“Ever closer union”, espoused by Jean Monnet and propelled forwards by successive generations of political and bureaucratic elites, has failed. The EU’s over-loaded institutions – held in low regard by Europe’s citizens – are ill-equipped to adapt to the pressing challenges of weak economic growth, rising global competition, insecurity and a looming demographic crisis.

Open Europe believes that the EU must now embrace radical reform based on economic liberalisation, a looser and more flexible structure and greater transparency and accountability if it is to overcome these challenges, and succeed in the twenty first century.

The best way forward for the EU is an urgent programme of radical change driven by a consensus between member states. In pursuit of this consensus, Open Europe seeks to involve like-minded individuals, political parties and organisations across Europe in our thinking and activities, and to disseminate our ideas throughout the EU and the rest of the world.

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