



WHEN CAN BRUSSELS INTERVENE IN MEMBER STATES' DECISIONS? THE LIMITS OF THE EU INSTITUTIONS' POWER

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Abstract: *This paper aims to analyse the division of powers between the EU and its member states and how the principles of conferral, subsidiarity, and proportionality limit the intervention of European institutions. By analyzing the constitutional crisis in Poland (2015–2023), it seeks to determine whether intervention by Brussels is justified when the application of EU law is compromised, provided that such intervention complies with the three principles of the EU.*

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1. INTRODUCTION

The member states of the European Union have transferred certain competences to the European institutions, in the spirit of cooperation and coordination. However, this transfer does not mean that the EU can interfere in every area of a national policy. Based on the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), certain limits and areas of competence have been established to ensure that the EU does not violate its own fundamental values, such as democracy and the rule of law. However, one question that continues to pose challenges even nowadays is where the jurisdiction of the member states begins and where it ends in relation to the jurisdiction assigned to the EU. It is safe to assume that the EU's power to intervene is extensive, but it is not unlimited; it is constrained by the



three major principles underpinning governance within the Union, as well as by the competences established by the EU Treaties.

This academic paper aims to examine how powers are allocated and distributed between Brussels and the member states, as well as to explore the limits of the European Union in the process of governing and coordinating public policies.

2. EU COMPETENCES

With the ratification of the Treaty of Lisbon (2009), the EU's three-pillar structure was abandoned in favor of dividing EU competences into three broad categories, based on the importance of the areas of activity. Currently, Article 2 of the TFEU establishes three broad categories of competences: exclusive competences, shared competences, and competences of support, coordination, or complementarity (TFEU, 2016, Art. 2). Exclusive competences are those areas in which only the European Union has the right to adopt legislative acts and legally binding acts. Member States can no longer legislate autonomously in these areas, except in cases where the Union expressly grants them the authority to implement acts adopted at the European level. Among the most important areas in which the Union has exclusive competence are the customs union, the establishment of competition rules necessary for the functioning of the internal market, monetary policy for the eurozone countries, and the common commercial policy. These competences are established by Article 3 of the TFEU (TFEU, 2016, Art. 3).

Shared competences, governed primarily by Article 4 TFEU, are those areas in which both the European Union and the Member States have the authority to adopt legislative acts and legally binding acts. In these matters, Member States retain the authority to act to the extent that the Union has not exercised its own authority or has decided not to exercise it. Shared competences are found in important areas such as the functioning of the internal market, agricultural and fisheries policy, environmental protection, consumer protection, transportation, and energy. In the case of these competences, the Union's exercise of its powers may limit the ability of Member States to adopt their own rules, depending on the extent to which the Union has already intervened in the relevant area (TFEU, 2016, Art. 4).

Last but not least, the competences of support, coordination, and complementarity provided for in Article 6 TFEU entail limited intervention by the European Union, whose role is to support, coordinate, or complement the actions of the Member States. Unlike exclusive and shared



competences, the exercise of these competences does not allow the Union to replace the actions of Member States or to impose the harmonization of national laws. The Union's involvement therefore aims to facilitate cooperation and support Member States' actions in areas such as education, culture, tourism, sports, industry, and civil protection, without leading to the standardization of national regulations (TFEU, 2016, Art. 6).

This division of powers between the member states and the Union serves to preserve the integrity and democratic nature of the European project. Clearly defining the areas in which the Union may exercise its authority and establishing the frameworks for its actions, contributes to prevent the uncontrolled expansion of the power of European institutions at the expense of the member states. Thus, the Union may act only within the limits of the powers conferred upon it by the Treaties, and the member states retain their competences in areas not transferred to the Union, which allows national authorities – which, in theory, are closer to their citizens - to continue to adopt policies and regulations in many areas. Therefore, the division of competences serves as a mechanism for limiting and controlling power within the European Union.

3. LIMITS OF THE EU INSTITUTIONS

At the same time, in areas where competence has been conferred on the Union, the exercise of that competence is subject to certain limits and principles, such as conferral, subsidiarity and proportionality. These principles are enshrined in Article 5 of the Treaty on European Union (TEU) and must be considered together, as each addresses a distinct question regarding the exercise of power at the European level (TEU, 2016, Art. 5).

3.1. PRINCIPLE OF CONFERRAL

The principle of conferral is the starting point of the European system of competences. According to Article 5(1) of the TEU, the limits of the Union's competences are determined by this principle. The actual exercise of these competences is governed by the principles of subsidiarity and proportionality. Article 5(2) of the TEU specifies that the Union may act only within the limits of the competences conferred upon it by the member states in the Treaties, for the purpose of achieving the objectives set out therein. Consequently, competences not conferred upon the Union by the Treaties remain with the member states (TEU, 2016, Art. 5(2)).



The principle of conferral reflects the idea that European institutions do not have general regulatory authority. The existence of an objective - or its degree of importance - does not automatically mean that the European Union can intervene. For the EU to be able to legislate, there must be a legal basis in the Treaties that confers upon it the necessary authority to adopt the measure in question. The Treaties set forth the areas in which the Union may act and the nature of those powers.

Therefore, this principle serves to limit the power of EU institutions: it prevents the expansion of EU powers into areas where member states have not agreed to the exercise of authority at the European level. Thus, the principle ensures the protection of member states' powers. The Union may exercise its own authority, but this authority derives from and is limited by the Treaties adopted by the Member States.

3.2. PRINCIPLE OF SUBSIDIARITY

While the principle of conferral addresses the question of whether the Union has the authority to act, the principle of subsidiarity addresses a different question: even if the Union has authority in a particular area, is it necessary for action to be taken at a European level, or is it sufficient for member states to act individually?

The principle of subsidiarity is set forth in Article 5(3) of the TEU and applies in areas that do not fall within the exclusive competence of the Union. The Union must act, in accordance to this provision, only to the extent that the objectives of the proposed action cannot be sufficiently achieved by the member states, but can be better achieved at the Union level, due to the scale or effects of the action in question (TEU, 2016, Art. 5(3)).

Subsidiarity does not determine the existence of the Union's competence, but rather the extent to which it may be exercised. The principle of conferral determines whether the Union may act in a particular area; the principle of subsidiarity determines whether, in an area where both the Union and the member states may act, Union intervention is justified. In this context, the principle of subsidiarity is particularly relevant in the context of shared competences. In such cases, the Union's exercise of competence must be justified in light of the member states' ability to achieve the relevant objectives through their own means. Therefore, subsidiarity functions as a mechanism to safeguard the member states' scope for action, without precluding the possibility of European intervention when the nature of the problem warrants it.



The application of the principle of subsidiarity is supplemented by Protocol No. 2 on the application of the principles of subsidiarity and proportionality. Among other things, it includes a mechanism through which national parliaments can verify compliance with the principle of subsidiarity in the European legislative process (TFEU, 2016, Protocol No. 2).

Thus, subsidiarity is not merely a principle, but is treated as mechanism of institutional oversight. National parliaments have the ability to submit reasoned opinions to the European institutions when they believe that a draft legislative act does not comply with the principle of subsidiarity.

This principle helps preserve the democratic nature of the EU, through the fact that national parliaments serve as a channel through which the national level participates in overseeing how powers are exercised at a European level.

3.3. PRINCIPLE OF PROPORTIONALITY

The third principle is that of proportionality, enshrined in Article 5(4) of the TEU. Unlike the principle of conferral, which concerns the existence and limits of competence, and the principle of subsidiarity, which concerns the need for Union action in an area that does not fall within its exclusive competence, proportionality relates to the content and form of Union action. According to Article 5(4) of the TEU, the content and form of Union action must not go beyond what is necessary to achieve the objectives set out in the Treaties. Consequently, even when the Union has the necessary competence to act and when its intervention is justified from the perspective of subsidiarity, the measures adopted must remain within the limits of what is necessary to achieve the intended objective (TEU, 2016, Art. 5(4)).

It aims to prevent situations in which European institutions would adopt measures that are more restrictive or burdensome than necessary to achieve the legitimate objective pursued. According to the official explanations provided by EUR-Lex, the application of this principle essentially requires that the measure be appropriate for achieving the intended objective, necessary for achieving it, and not impose an excessive burden on individuals in relation to the intended objective (EUR-Lex, n.d.).

Consequently, proportionality requires a relationship between the means employed by the Union and the objective pursued. It is not sufficient for a measure to pursue a legitimate objective provided for by the Treaties; the specific method of intervention must be justified by



the necessity of achieving that objective. The Union must choose a course of action that does not go beyond what is necessary.

4. EU AND POLAND'S RULE OF LAW DISPUTE

We can say that these allocations of competences stem precisely from situations in which it was unclear where exactly the line between the supremacy of the EU and that of the member states lay. One such situation concerns Poland's constitutional crisis in the context of the rise of the PiS (Law and Justice) party between 2015 and 2023. Unlike the purely electoral debates in other regions, in Poland, euroscepticism and institutional resistance have manifested themselves directly at the government level (Cymer, 2022, pp. 90-105).

Tensions have escalated in the wake of the judicial reforms initiated by the Warsaw government after 2015. In December 2017, the European Commission launched the procedure provided for in Article 7 of the TEU against Poland. This marked the beginning of a diplomatic and political "cold war", centered on allegations of violations of fundamental values and the rule of law (Trosiak, 2020, pp. 233–235). The decision by the Polish Constitutional Court, taken in October 2021, was a significant moment during this period, as it signaled, to some extent, an undermining of the supremacy of EU law. It ruled that certain provisions of the EU Treaties are incompatible with the national Constitution, thereby undermining the direct application of the principle of the supremacy of EU law and the authority of the decisions of the Court of Justice of the European Union (CJEU). In the view of the Polish authorities, the Constitution remains the supreme legal instrument within the national territory (Cymer, 2022, p. 93).

The Polish institutional dispute illustrates how the theoretical principles are put to the test in practice. Under the conferral principle, the organization of the judicial system falls primarily within the competence of the member state. However, this does not preclude EU intervention when national reforms affect obligations under European law. Since national courts also apply EU law, their independence can become a matter of European interest. Consequently, the EU does not acquire general jurisdiction over the Polish judiciary, but may intervene only to the extent that there is a legal basis in the Treaties.

The Polish case also raises the question of at what level this situation should be addressed. On the one hand, the organization of the judiciary is traditionally a national responsibility. On the other hand, issues concerning the independence of the courts can affect the uniformity of the



application of EU law. Thus, the dispute highlights the difficulty of drawing the line between a member state's autonomy and the need for intervention at a supranational level (Kustra-Rogatka, 2026).

Proportionality limits not only the EU's ability to intervene, but also the scope of its intervention. In this specific case, the actions of the European institutions must be analyzed in light of the objective of protecting judicial independence and ensuring the effective application of EU law. Consequently, European intervention must remain tied to the obligations set forth in the Treaties and must not turn into general oversight of the organization of the national judicial system (TEU, 2016, Art. 5(4); Protocol No. 2, 2016).

The case of Poland shows that the limits of the EU's power cannot be determined solely by separating "national" from "European" areas. Attribution determines whether the EU can act, subsidiarity concerns the justification for intervention at the European level, and proportionality limits the scope of such intervention. Even in an area that primarily falls within the competence of the member states, the Union's intervention may be justified when the exercise of national authority affects obligations arising from EU law.

RESULTS

An analysis of the distribution of powers between the European Union and the member states reveals the fact that there is interdependence between the categories of competences established by the Treaty of Lisbon and the principles governing the limits of European governance. The legal framework established by Article 2 of the TFEU divides competences into three categories: exclusive, shared and those involving support, coordination, or supplementation. The manner in which the European institutions exercise these powers is governed by the three principles set forth in Article 5 of the TEU.

The principle of conferral first determines whether a particular competence has been transferred to the Union, while subsidiarity and proportionality establish the conditions and limits under which that competence may be exercised. The relationship varies depending on the nature of the competence: in the case of exclusive competences, the role of the member states is more limited, while in the case of shared competences, a more careful distinction is required between EU and national action. In the case of supporting, coordinating, or complementary competences,



the limits are even clearer, as the EU can support or coordinate the actions of member states without replacing them.

The case of Poland supports this observation. Although the organization of the judicial system falls primarily within the national sphere, judicial reforms may become relevant to the EU when they affect the independence of the courts that apply European law. Therefore, the fact that an area falls primarily within the competence of the member states does not automatically preclude EU intervention, but such intervention must be based on a competence provided for in the Treaties and must respect the limits imposed by the principles of conferral, subsidiarity, and proportionality. Thus, the case of Poland highlights the fact that the types of competences and the principles limiting their exercise must be analysed together, since competence establishes the framework within which the EU can act, and the three principles set the limits of that action.

CONCLUSIONS

From this paper, a number of conclusions can be drawn that reflect the results presented above. The transfer of competences to European institutions does not grant the European Union unlimited authority to intervene in the national policies of member states. The division of powers established by the Treaty of Lisbon (Article 2 TFEU) into exclusive, shared, and supporting, coordinating, or complementary competences serves as a direct instrument for limiting and controlling power. This framework prevents a potential expansion of the authority of the Brussels institutions, which ensures that member states retain their sovereignty in areas which are not transferred to the Union.

The European governance system exists through a relationship of succession and limitation among the EU's three fundamental principles. The principle of conferral determines whether the Union has the legal basis and authority to act in a particular area, thereby preventing the expansion of its powers beyond what the Member States have expressly agreed to in the Treaties. The principle of subsidiarity determines whether action at the European level is necessary within the framework of shared competences, ensuring that decisions are made only if the objectives cannot be sufficiently achieved by the Member States. Compliance with this principle is institutionally monitored by national parliaments through Protocol No. 2. The principle of proportionality limits the content, form, and intensity of the Union's action,



requiring that no measure adopted go beyond what is strictly necessary to achieve the established objectives.

An analysis of the situation in Poland shows that the delineation of competences cannot be achieved through a rigid separation between the “national” and “european” spheres. Although the organization of the judicial system is a national matter, the EU may intervene when the independence of the courts and the application of European law are affected. However, the principle of proportionality requires that such intervention be limited to safeguarding the obligations set forth in the Treaties.

Ultimately, the rules governing the allocations of competences and the three fundamental principles of the EU ensure a balance between supranational power and its exercise, while safeguarding the autonomy of the member states – a factor that ensures the democratic matter of the European Union.

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