

THE PRINCIPLE OF MULTI-LEVEL GOVERNANCE AS AN INSTRUMENT OF DEMOCRATIZATION OF DECISION-MAKING IN THE EUROPEAN UNION

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Abstract. The principle of multi-level governance significantly affects the quality of decision-making in the European Union. By distributing authority across governance levels, and increasing participation of governmental actors and non-state actors (entrepreneurs, citizens, non-governmental organizations) in EU decision-making, MLG contributes to the democratic legitimacy of decisions made by the EU. Importantly, the principle of multi-level governance has evolved gradually. On the one hand, it was promoted by the EU legislation, and on the other, embraced and supported by lobby groups representing various interests at the EU level.

Keywords: multi-level governance, European Union, democratization, legitimacy

INTRODUCTION

The reform of the EU institutional framework and its entire legal system implemented by the Treaty of Lisbon has changed the hitherto legal status of the EU as an international organization with regard to its internal structure and international public law. The Treaty was a huge step towards legislative harmonization, as it unified the law making system and systematized the sources of EU law. In consequence, the list of sources of EU law is more transparent, structured and unified, and placed within the entire legal framework of the EU.

Principles of the EU law are one of the sources of the EU law. They are made on the basis of primary law or derived from the interpretation of law made by the Court of Justice of the European Union. Among them, the policy-making principles are of special significance. One of them – i.e. the principle of multi-level governance – is the focus of the analysis presented in this paper.

The aim of this paper is to shed light on the source of the principle, its evolution and significance in the decision-making process of the EU. The paper looks into reference literature, the acts of secondary law of the EU and views relevant to the construction of the said policy-making principle. The author will attempt to prove that the principle of multi-level governance is not only

a policy-making principle, but also an efficient legal tool that facilitates democratization of the EU decision processes.

1. CRISIS OF DEMOCRATIC LEGITIMACY OF THE EUROPEAN UNION AS A CATALYST FOR CHANGING ITS DECISION-MAKING SYSTEM

The European Union is an unfinished project, one that is continuously evolving and adapting to the changing reality of the world and the expectations of its member states. When on 18 April 1951 the Treaty establishing the European Coal and Steel Community [ECSC] was signed in Paris, an international organization came into being whose most prominent goal was economic development [Barcz 2010, 22–40]. The integration process intensified over successive decades, embracing new member states and new areas of cooperation [Galster 2010, 43–119].

In its history, Europe has many turbulent chapters related to the process of integration [Borburska 2018, 27–32]. It is particularly true in case of such a complex project, and it is only natural that political and social crises have taken place. They were also noted by governments of the member states and Europe's citizens. As it comes to arguments raised by opponents of EU integration, a recurring one related to the lack of democratic legitimacy of European institutions to govern [Kubin 2014, 53–82].

The 80's and 90's saw a serious crisis regarding the democratic mandate of the European Community. In response, member states and institutions of the European Economic Community came up with reforms, embodied in the Treaty of Maastricht [Galster 2010, 48–51]. This act of primary EU law introduced a number of significant changes, i.a., it established the office of European Ombudsman [Sadowski 2014, 603–29], the institution of EU citizenship [Gniadzik 2018, 1–61] and the Committee of the Regions [Kuligowski 2019, 75–87].

Another major crisis hit the European Union after the most recent enlargement of the EU in 2013. The crisis was the effect of reaching a turning point in the EU's integration process. Within just 10 years, following accession of several Central and Eastern European countries, the number of member states doubled. Such robust expansion sparked a discussion on the identity of the European Union. What should the EU be? What are its goals? What should be the EU's final legal entity: an international organization, a federation or some other, as yet undetermined, entity? [Grzeszczak 2014, 7–8].

The democratic authority of the EU law making process was and still is, justly so, questionable, as it continues to lack transparency, to engage few participants and citizens, as a very small percentage of citizens are involved in the EU consultations. And yet, it is the building of common identity and

co-deciding about the future that lays the foundation of solidarity and belonging to any community, including the EU community.

The decision-making process in the EU was constructed based on the principle of multi-level governance.¹ This very principle was expected to address the above reservations. It is supposed to engage as many actors at different levels as possible, so as to ensure that the decision-making process is transparent and genuinely co-created.

Decision-making mechanisms in this international organization cannot be compared to decision-making processes within individual member states. The EU institutional system follows the principle of institutional balance [Dubowski 2010] which implies that there is no hierarchy between institutions within the legislative process. This solution ensures that decisions are taken with consideration of expert and political environments that engage institutions of the EU, governments and parliaments of member states, local and regional governments, and the civil society [Witkowska 2015, 125–26].

2. THE PRINCIPLE OF LAW AS A SOURCE OF EU LAW

The principle of law is a concept operating in the theory of law that is very difficult to define. There are two main ways of understanding the principle of law among legal scholars, that is prescriptive and descriptive [Korycka 2007, 3]. The task to create a catalogue of principles of law is as challenging [Bogucki and Czepita 2008, 69–70].

Within the EU legal framework we can definitely distinguish the written principles of law (principle of subsidiarity, of proportionality) and unwritten (principle of priority of the EU law) [Galster 2010, 218–19]. The view that principles of law are a special kind of legal norms that determine a general concept bearing a certain degree of significance is also shared by the author of this paper. The significance of the principles stems from their axiology and the scope they cover. Similarly, in the EU legal system special place is given to policy-making principles. They regulate the foundation of the EU legal system, the functioning of its institutional system and the division of competence between the EU and member states. Galster underlines that three functions can be ascribed to the EU principles of law: an interpretative function, a demonstrative function as a paradigm of legitimacy and as a filler of treaty gaps.

The author believes that MLG is a policy-making principle aimed at regulating the EU decision processes in a way that ensures involvement of many entities at different level of governance, without forsaking responsibility for individual decisions.

¹ Hereinafter: MLG.

3. THE PRINCIPLE OF MULTI-LEVEL GOVERNANCE AND DEMOCRATIZATION OF DECISION-MAKING PROCESSES IN THE EUROPEAN UNION

MLG originated in the late '80s, during the era of reform of the Treaty of Rome that reshaped the EU by implementing a new cohesion policy in 1988. To reduce social and economic disparities throughout the EU, Structural Funds were integrated into the overarching cohesion policy, and among them – the European Regional Development Fund. In the context of this instrument Gary Marks observed that multi-level governance is a system of forging networks of relations between institutions, public authorities and private entities. The aim of these networks is to implement the goals of the Development Fund [Marks 1992, 19]. In subsequent academic works, the author defined and scrutinized the relations between actors involved in the implementation of the EU policies.

In one of his works, Gary Marks defined MLG as a “system of continuous negotiation among nested governments at several territorial tiers, i.e. supra-national, national, regional and local” [Idem 1993, 392]. Another contributor to the debates on MLG and Marks’ theory was Liesbet Hooghe. According to Marks and Hooghe, a very important feature of MLG is the separation of decision-making authority in both vertical and horizontal relations in case of public-private structures managing national political systems [Potorski 2019, 24–25]. In the continuously changing European Union and progressing integration, under their public policies, member states willingly transfer more authority not only to the EU institutions, but also to local governments and other participants in the decision-making process. Since the state has transferred the power hitherto reserved to the state, at present it has to co-decide with other actors [Danel 2009, 109–10].

Initially, attempts to formulate a definition of MLG raised serious doubts. This hesitancy was justifiable as the definition contained nebulous concepts. Roderick Arthur Rhodes, one of the critics, argued that Marks’ theory lacked definition of the concept of “network.” In his view, the lack of description of the network’s creation process and its internal structure was also a weak point of the theory [Rhodes 1997, 140].

Until the Treaty of Lisbon² was put to effect, the principle of MLG did not have any grounds in EU treaties. Reform of the European Union, perpetrated on the basis of this primary act, included MLG in decision-making. This principle is particularly significant with respect to territorial cohesion and the local dimension of the principle of subsidiarity. It should be emphasized that MLG

² Consolidated versions of the Treaty on European Union and the Treaty in the functioning of the European Union of 13 December 2007, OJ C 202, 07.06.2016.

has derived from the principles of subsidiarity and proportionality embedded in the treaties [Urban–Kozłowska 2016, 199–200]. The principle of MLG is supported by the system of early warning mechanism of national parliaments. It also plays an important role in the monitoring and control of execution of public policy tasks by the EU institutions [Ruszkowski 2019, 106–108].

At the level of the European Union, it is the Committee of Regions that is the strongest lobbyist in favour of increasing the role of MLG in policy making. It is no chance that this body advocates strongly MLG as it is primarily local governments that are the addressees of acts passed by the EU institutions, and it is local governments (in Poland in particular) that are responsible for the implementation of cohesion policy through adequate allocation of the EU funds. Therefore, it is in the best interest of local governments to strengthen MLG system in order to formalize their position in the EU decision-making process. In the author's view, the latter correspondence is emphasized by the reports on the impact of MLG on the EU legislation.³

Another concept important for the research thesis is democratization of decision-making in the European Union. On the one hand, it should be understood as the normative and formal process of governance, and on the other hand, as genuine acceptance of governance by citizens. Both aspects will be analyzed in this paper, as both pertain to the research subject. Democratization of the EU decision-making is implemented in a threefold way through: axiological legitimization of democracy which is reflected in the system of values regulated by treaties, democratic structure of the EU's institutions and organs, and the structure that promotes engagement of citizens and civil governance [Mizera 2014, 107–109].

4. MULTI-LEVEL GOVERNANCE IN THE EU DECISION-MAKING

The first act honouring MLG was adoption of the Berlin Declaration on 25 March 2007 by heads of governments and states, which happened in effect of the Declaration of Rome formulated earlier by the Committee of the Regions.⁴

White Paper on Multi-Level Governance adopted by the Committee of the Regions was another significant document which reflected the EU's determination to support participatory democracy.⁵ White Paper not only provided a definition of multi-level governance,⁶ but also suggested specific solutions

³ Annual Reports on the Impact of CoR Opinions, <https://cor.europa.eu/pl/our-work/Pages/Opinions.aspx> [accessed: 01.09.2021].

⁴ Declaration for Europe of the Committee of the Regions, D1/CdR 55/2007 fin.

⁵ The Committee of the Regions' White Paper on Multi-Level Governance (2009/C 211/01).

⁶ Multi-level governance was defined by the Committee of the Regions as "coordinated action by the European Union, the Member States and local and regional authorities, based on partnership and aimed at drawing up and implementing EU policies. It leads to responsibility being

intended to reinforce the principle of MLG in EU policy-making. At the same time, the document emphasized the importance of the principle for strengthening democratic legitimacy of the process of European integration. Moreover, the Committee of the Regions provided some convincing examples of relevance and efficiency of MLG, including, i.a., the European neighborhood policy, cohesion policy and territorial cooperation.⁷

The Committee of the Regions continued to work on strengthening multi-governance across all tiers of government. In 2012 it issued an opinion⁸ containing a thorough analysis of the practical application of MLG in EU policy-making. The Committee of the Regions urged the European Parliament and the European Commission to increase their commitment to applying the mechanisms of MLG at different levels of the EU policy-making process. It also called for creating a “Multilevel Governance Scoreboard at the European level” which would help to monitor and measure the incorporation of this principle. The first edition of the scoreboard will cover four key strategies and policies in the European Union’s political programme, i.e. Europa 2020, the 2011–2020 Energy Strategy, the Stockholm Programme and the Spring Agenda.⁹ Moreover, the Committee of the Regions also commits to the drawing up and implementation of the “European Union’s Charter for Multilevel Governance.”¹⁰

The stand point of the Committee of the Regions on the promotion and implementation of MLG mechanisms and principles was reflected in the operation of the EU institutions and adopted legislative acts. First, it should be emphasized that the European Commission acknowledged the importance of the said principle for the EU policy-making. It underlined that implementation of MLG reduces coordination and capacity gaps in policy making in terms of information, resources, funding, administrative and political fragmentation.¹¹

European Parliament also expressed its position with regard to multi-level governance. The Resolution passed in 2016 draws attention to the challenges

shared between the different tiers of government concerned and is underpinned by all sources of democratic legitimacy and the representative nature of the different players involved.”

⁷ White Paper on Multi-Level Governance (2009/C 211/01).

⁸ Opinion of the Committee of the Regions on “building a European culture of multilevel governance: follow-up to the Committee of the Regions’ White Paper,” OJ C 113, 18.04.2012.

⁹ The Committee of the Regions developed concrete practices for multilevel governance in six categories under two headings: I Procedures: Information & consultation; Stakeholder involvement and Responsiveness; II. Content of EU policies: Territorial/integrated/place based policy; Smart regulation mechanisms and Innovative instruments for implementation and partnership.

¹⁰ The Charter was adopted by the Committee of the Regions in 2014 on the basis of the Resolution of the Committee of the Regions on the Charter for Multilevel Governance in Europe, OJ C 174, 07.06.2014.

¹¹ Commission Staff Working Document. The partnership principle in the implementation of the Common Strategic Framework Funds – elements for a European Code of Conduct on Partnership. Brussels 24 April 2012, SWD(2012) 106 fin.

of implementation of MLG into the legal order and practices of member states having different constitutional systems.¹² The Resolution passed in 2017, on the other hand, under lines that the MLG principle may be an important tool supporting the implementation of e-democracy.¹³

In result of efforts undertaken by the Committee of the Regions and by other EU institutions, multi-level governance is gradually gaining in importance. A good example here is the opinion of the European Economic and Social Committee¹⁴ which emphasized the significance of the said principle for the operations of public administration at different levels.

In 2021, the European Parliament and the Council of Europe passed three regulations crucial to the financial framework of the European Union for the years 2021–2027. Each of them stresses out that it is crucial for the policies and goals to be implemented in line with the multi-level governance principle.¹⁵ Such validation of MLG is a proof that governance where there is a dispersion of authority upwards, downwards and sideways is gaining in importance, and that the democratic mandate of the EU is being strengthened. Through involvement grounded in the binding EU legislation, all actors responsible for the implementation of public policies are obligated to foster open government partnerships and collaborate in line with the key principles of transparency, accountability, participation, efficiency and cohesion.

MLG helps the EU to evolve from the “top-down” model of governance to one that is more inclusive, involving not only regions and cities, but ultimately citizens. In plain words, MLG promotes citizen participation in the policy cycle. Citizens as “social actors” have two key instruments to their disposal to influence the EU policy-making. First instrument are various forms of lobbying, e.g. interest groups, social networks, cooperation and consultation networks [Garniszewski 2013, 25–100], or participation in social consultations

¹² European Parliament resolution of 12 December 2013 on constitutional problems of a multi-tier governance in the European Union (2012/2078(INI)), OJ C 468, 15.12.2016, p.176.

¹³ European Parliament resolution of 16 March 2017 on e-democracy in the European Union: potential and challenges (2016/2008(INI)), OJ C 263, 25.7.2018, p. 156.

¹⁴ Opinion of the European Economic and Social Committee on Public services principles for stability of democratic order, EESC 2020/02236, OJ C 56, 16.2.2021, p. 29.

¹⁵ Regulation (EU) 2021/1058 of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund, OJ L 231, 30.06.2021, p. 60; Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, OJ L 231, 30.06.2021, p. 159; Regulation (EU) 2021/1059 of the European Parliament and of the Council of 24 June 2021 on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments, OJ L 231, 30.06.2021, p. 94.

organized by the EU institutions and bodies [Kurczewska 2015, 34–38]. However, it is a much easier to involve institutionalized entities than citizens in the EU policy-making process. Societal participation in EU governance is a big challenge, and in the author's humble opinion, it has had marginal significance for the institution of European Union. In the last four years though, increased attempts to engage citizens in policymaking can be observed with such initiatives as e.g. EU Citizens' Dialogues organized by the European Commission or the Conference on the Future of Europe 2021, which is a multilingual digital platform offering citizens across Europe a real opportunity to debate EU's future. These are just a few of many "exercises in democracy" that take place in addition to social consultations or the European legislative initiative.

It should be noted that the efficiency of MLG principle applied by the institutional system of the EU is conditioned on genuine acknowledgment of views and contributions presented by all state and non-state actors in the complex, interconnected MLG network. An underlying assumption of MLG is not only listening to the opinions and demands of civil society and various stakeholders, but rather hearing and understanding them, and including them in EU policy-making.

CONCLUSIONS

Since the 1960's the European Union has been widely criticized for its lack of democratic legitimacy in policy-making. The effects of implemented reforms (i.a. general elections to the European Parliament, establishment of European citizenship, European Citizens' Initiative) were ineffectual, as they only suspended debates about the EU decision-making as suffering from a "democratic deficit."

Multi-level governance was sanctioned by the EU institutions as a policy-making principle that fully addresses the objections of the EU policy-making to be undemocratic. MLG principle plays a key role in the policy-making by engaging multiple actors at multiple different levels. MLG offers a participatory answer in providing tools for participation in the EU law-making to regions, cities and citizens, thereby fostering democratization and increasing democratic legitimacy of the entire European Union.

It should be underlined that the Committee of the Regions, the most active advocate of the MLG principle, has since 2012 undertaken numerous endeavors that have resulted in strengthening the importance of multi-level governance in EU decision-making. Selected normative acts presented in the paper speak to the fruitfulness of those endeavors.

However, despite the increased recognition of this policy-making principle in EU decision-making, to play a greater role, multi-level governance

requires more commitment on the part of the EU institutional system. That shift towards multi-governance can be achieved through: sanctioning the participation of citizens and non-governmental organizations in decision-making, increasing participation of national parliaments in key policies regarding migration and asylum procedures, defining accountability for decisions taken by individual participants, and finally, providing a clear definition of MLG, its complex governance networks of actors, their responsibility and policies that come under the MLG framework.

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