THE PRINCIPLE OF SUBSIDIARITY – THE LEGAL BASIS FOR THE PARTICIPATION OF NATIONAL PARLIAMENTS AT THE EUROPEAN UNION'S LEGISLATIVE ACTIVITY

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Abstract
The communication aims to emphasize the context in which the principle of subsidiarity was adopted, clarifying the dilemma about its purpose: is it a legal instrument to protect national sovereignty of the European Union's Member States or is it a legal instrument which accelerates their federal integration. The document also approaches the problem of the Romanian Parliament in adapting procedures to the Lisbon Treaty, Protocol no. 2 on applying principles of subsidiarity and proportionality. In the described context it shall be discussed the controversial subject regarding the sovereignty transfer whenever the national parliament performs a subsidiarity check on an EU draft legislative act.

Keywords: *subsidiarity, Lisbon Treaty, Protocol no. 2, national level, the European Union's Member States.*

1. Introduction

Subsidiarity is the legal instrument through which the states affirm their legal sovereign willpower (and determination) in the legislative process of theEuropean Union. Is this affirmation true? Most opinions in European law doctrine confirm this idea.

The doctrinally arguments supporting that the states manifest their sovereignty in the legal european area by applying the sovereignty principle are multiple. Their detail must start from the historical perspective over the start and later over the strengthening of this principle.

"In the doctrine it was sustained[1] that the principle of subsidiarity, a principle that is considered constitutionally fundamental in European law, comes from the Roman-Catholic mentation of 1930`s, according to whom the social, politic and human problems must find their solution as close as possible to the individual, inside his community: family, school, working place; the political echelon (superior) must be requested only ultimately, as the first one is outdated"[2]. It was also pointed in the doctrine that "the idea of subsidiarity is specific to the federal/federate ratio, or German law generally"[3].

"The presence of the principle of subsidiarity inside European Union is old. Its associated purpose does not miss a moment from this system. This way, it can be appreciated that the communitary structure appeared as consequence to the implementation of subsidiarity, while the competence assignment operated to its benefit was, incontestably, generated by the experienced need of Member States of regrouping to deal together with some problems that they could not individually solve any longer, or could not satisfying solve. In this spirit were amended institutive treaties, meaning that new competences were assigned the Communities new competences when trough the European Single Act and Treaty on the European Union"[4].

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[1] N.W.Barber, *The limited modesty of subsidiarity, European Law Journal,* vol. 11, (2005), p.308; A. Follesdal, Subsidiarity, Journal of Political Philosophy, 1998, p.231-259.

[2] Raluca Bercea, *European Law. Basics*, (C.H.Beck, Bucharest, 2007), p. 327.

[3] V. Constantinesco, *Who`s Afraid of Subsidiarity, in A. Barraw*, D.A. Wyat and J. Wyat (ed.) Yearbook of European Law 11 , (Clarendon, Oxford,1991), p.3.

[4] Raluca Bercea – *c.w.* , p. 327-328.

"The constitutionalisation of the principle due the Maastricht Treaty, in which preamble the European Member States declare themselves decided to continue the creating process of a tighter and tighter union between european nations where the decisions will be taken as close as possible to the citizen, according to the principle of subsidiarity. The second Article of the Treaty, which defines European Union`s Purposes, contains also a reference to the principle of subsidiarity, which will be imposed, generally, to all Union`s institutions"[5]. In this direction article 5 of the Treaty, establishing the European Community (inserted by the Treaty regarding European Union) disposes: "The community acts in its competences limits and its established objectives through this treaty. In the fields that are not related to its exclusive competence the community does not interfere, according to the principle of subsidiarity, only if and as far as the objectives and purposes are better realized at communitary level"[6] .

The principle of subsidiarity was taken and extended in the treaty regarding the instauration of a Constitution for Europe, not active. Currently, this principle is settled, in the European Union Function Treaty where it has two protocols consacrated, The Protocol number 2 regarding the application of the principle of subsidiarity and proportionality and the Protocol number 1 regarding the role that national Parliaments are having in European Union, which devote the legal mechanism through which the principle of subsidiarity finds its relevance.

We observe, inside the legal evolution that the principle of subsidiarity became an indispensable mechanism to maintaining and affirming the states sovereignty, in the ample elaboration process of legal documents at european level.

"Joel Rideau notices that if initially the states became aware of the necessity to assign some competences to European Union to be able to deal with some common duties"[7], then "the development of communitary competences and their wield had gathered fear reactions received from some states restless to see their sovereignty limited. The national Parliaments felt often voided of their prerogatives in behalf of a system characterized by an incontestable democratic deficiency. The component states often felt frustrated and restless towards the communitary power. The German Lands reactions had a true catalyst role in the establishment of this principle"[8].

Another doctrinaire, Jean-Paul Jaque notices, regarding the principle of subsidiarity that it "governs the exercise of competences". Although the statement used in the Maastricht Treaty is negative ("Community does not interfere") the principle of subsidiarity presents two aspects: one way it limits the communitary intervention when a problem that can be solved by the Member States; on the other way, however, it involves a communitary action when it appears necessary due the problem`s magnitude and due the incapacity of the Member States in treating it effectively"[9].

In practice and also in doctrine the principle of subsidiarity generates arguments and controversies. The principle is identified as an instrument through which the states can manifest their national sovereignty inside the political union or as an instrument through which the overstatal character of European Union confirms itself and this way it reduces the manifest for sovereign willpower of European Union`s Member States. Our demarche intends to clarify this controversy.

[5] Raluca Bercea – *c. w.* , p. 331.

[6] European Union Traty, Maastricht, 1992.

[7] Constanţa Călinoiu, Victor Duculescu, *Constitutional European Law*, (Lumina Lex publishing, 2008), p.178

[8] Joel Rideau, *Droit institutionnel de l`Union et des Comunnautes europeenne*, II, (Librairire Generale de Droit et de Jurisprudence, Paris, 1999), p. 907 .

[9] Constanţa Călinoiu, Victor Duculescu, *idem 7*

2. Content

The principle of subsidiarity - legal instrument of strengthening the legal power of European Union

The doctrine delivers extremely diversified points of view regarding the role and exercise of principle of subsidiarity. Many of the opinions are expressed in supporting the assumption that the principle of subsidiarity was instituted to protect the national sovereignty compared to the tendency to gain all the settlement fields at union level, such as J. Steiner`s opinion: " The European Union was not preoccupied with the distribution of competencies between community and Member States, but with the distribution of duties/responsibilities from a very large activities area, with the purpose touching some common objectives and mutual conveniences. Although it was obvious that in some contents the possibility of an action from the Member States was reduced, still, to be able to gather the wanted purpose- the custom community was an indispensable premise to the unique market- in most areas the competency was convergent. This did not mean that the states and the Union could govern the same thing in the same time, or that there were not required any kind of restrictions to the competency of the states in this areas (when they had to follow the rules included in the treaties-institutive and modifying), but that their action had to have a complementary or an additional character. Obviously, once the Union wielded its attributions, gained through the treaty, to govern a certain aspect inside an activity field, the states have no longer the liberty to develop measures that could overcome those rules. The states attributions decrease in the same time with the increase of the volume and area of inclusion of communitary law. But the contents of activity in which the Member States did not held a certain level of competency are few"[10]

An opposite opinion was expressed by A.G.Toth. He affirms that "repeatedly" (...) the Court confirmed (...) that in all contents transferred to the Union by the Member States, the Union`s competency is practically exclusive and does not keep a corner to some competencies from the Member States. So, where the competency of the Union starts, the one of Member States ends. Consequently, where the Union`s competency starts, the competency that the Member States have ends. Beyond this point the Member States have no longer the prerogative to elaborate one sided law. They can operate in the limits of their strictly defined attributions in management/implementation, delegated backward toward the national authorities by the Union`s institution. As the Court of justice of European Union decided "the existence of Union`s Competencies excludes the possibility of some concurrent responsibilities from the Member States. "Not even the fact that, for a certain period of time, the Union does not exercise the competency that has been conveyed to, does not create a concurrent competency in favor of Member States during that period of time. This principle results from the doctrin (and jurisprudence- a.n.) of supremacy of Europe Union`s law, which, of course, is a basic principle of European Law"[11] Based on the jurisprudence created regarding European Union`s law supremacy compared to national laws "the European Court of Justice is considered often the <<negative character>>"[12] because, some national voices say, this defeats through the decrees the national powerwill of Member States. In this context, „the application of subsidiarity principle had create, as expected, important problems in interpreting, specially inside European Union`s Court of Justice. One of them is the question if the action of Member States, that the art. 5 (ex 3B) of TCE reports must be related to the activity developed by the states individually or/and collectively. This involves examining if a collective action of the states can or cannot go under the incidence of subsidiarity principle and in what measure"[13].

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[10] J. Steiner, *Subsidiarity under the Maastricht Treaty*, O`Keefee şi Twomey, Legal Issues of Maastricht Treaty (Chancery,1994), p.57-58

[11] A.G. Toth, A *Legal Analysis of Subsidiarity, O`Keefee şi Twomey, Legal Issues of Maastricht Treaty* (Chancery,1994), p.39-40

[12] Paul Craig, Grainne de Burca, *European Law*, IV (ed.), (Hamangiu publishing, Bucharest, 20090, p. 133

[13] Constanţa Călinoiu, Victor Duculescu, *c.w.*, p.179

The Court of Justice, in 1996, in test case the Board versus Belgium, expressed its point of view, meaning it "excluded the possibility that the principle of subsidiarity would justify the taking, culturally contented, of a state from the obligations resulting from the Directive 89/552/CEE from October 3,1989 regarding the redistribution of cable emission"[14].

It is interesting to analyze if the principle of subsidiarity is a warranty-instrument to protect the national sovereignty or is an instrument wherethrough it`s guaranteed to the european institutions the "won right" in the way of legal competence.

At first view we could be temped to consider the principle of subsidiarity a favoring instrument to sovereign powerwill of the states, but the institutive and improvement treaty`s evolution, starting with the Maastricht Treaty and ending with Lisbon Treaty, contravenes this hypothesis. The principle of subsidiarity has become the legal instrument that guarantees the application of Supremacy Principle of European Law! We argue this affirmation through the fact that the sent settlement fields, by sovereignty transfer to communitary level, exit the settlement area of the states and enter in the exclusive Union`s settlement competency, using the reason that at communitary level the settlement is more effective. Consequently, by applying the subsidiarity principle at communitary and national level fulfills the process of sovereignty renouncement. When an european institution applies the subsidiarity control to a law-making project and claims that it is in its competency to govern, practically it invests itself with the sovereign force of states, and when the states, following the same procedure find out that is respected the principle of subsidiarity, they proceed to a sovereignty renouncement, that they transfer, through every favorable notice, to the european institutions.

It is also interesting the procedure that the national parliaments accomplish this transfer. The common disposals are found in the Protocol 2 regarding the application of the principle of subsidiarity, Treaty regarding European Union Function. In this protocol it`s showed through the disposals of article 6 and 7 that "in term of eight weeks from the date of sending a law-making project in official languages of Union, any national parliament or any chamber can address to the President of European Parliament, to the President of the Commission and to the President of the Council, with a motivated notice that expose the reasons why they consider that the project is not in accordance with the principle of subsidiarity."

Every national parliament or every chamber of a national parliament has the assignment to consult the regional parliaments with legal competences. Every national parliament has two votes, allocated according to the national parliamentary system. If the parliamentary system is a two-chambered system, every chamber has a vote. If the motivated notices regarding non-compliance with the principle of subsidiarity by a law-making project represent at least the third part of all votes adjudicated to national parliaments, according to indent (1), second paragraph, the project needs to be reevaluated. This bar is the fourth part in case of a law-making project presented in validity of the article 76 from the Treaty regarding the action of European Union, concerning liberty space, security and justice."

The member states apply different procedures to assay the concordance of a law-making project with the principle of subsidiarity.

In Austria the article 23(d) from the Constitution gives Lands the possibility to influence Austria`s position inside the process of adopting decisions in European Union, through the presentation of their point of view. Therefore, the article 23 letter (d) establishes:

„(1) The Federation must inform the Laender without delay regarding all projects within the framework of the European Union which affect the Laender's autonomous sphere of competence or could otherwise be of interest to them and it must allow them opportunity to present their views within a reasonable interval to be fixed by the Federation. Such comments shall be addressed to the

[14] Constanța Călinoiu, Victor Duculescu, *c.w.*, p.180

Federal Chancellery. The same holds good for the municipalities in so far as their own sphere of competence or other important interests of the municipalities are affected. Representation of the municipalities is in these matters incumbent on the Austrian Association of Cities and Towns (Austrian Municipal Federation) and the Austrian Association of municipalities (Austrian Communal Federation) (Art. 115 paragraph. 3).

(2) Is the Federation in possession of a uniform comment by the Laender on a project within the framework of European Union where legislation is Land business, the Federation is bound thereby in negotiations with and voting in the European Union. It may deviate therefore only for compelling foreign

and integration policy reasons. The Federation must advise the Laender of these reasons without delay.

(3) In so far as a project within the framework of the European Union affects also matters whose legislation is Land business, the Federal Government can assign to a representative nominated by the Laender participation in the Council's formation of its objective. The exercise of this authority will be

effected in co-operation with the competent member of the Federal Goverment and in co-ordination with the latter. Para. 2 above applies to such a Land representative. In matters pertaining to Federal legislation the Laender representative is responsible to the National Council, in matters pertaining to Land legislation to the Land legislatures in accordance in respect with Art. 142.

The article 23 (e) establishes the participation of the National Council and Federal Council to prepare Austria`s position that needs to be defended inside the decisional process in European Union:

(1) The competent member of the Federal Government shall without delay inform the National Council and the Federal Council about all projects within the framework of the European Union and afford them opportunity to vent their opinion.

(2) Is the competent member of the Federal Government in possession of an opinion by the National Council about a project within the framework of the European Union which shall be passed into Federal law or which bears upon the issue of a directly applicable juridical act concerning matters which would

need to be settled by Federal legislation, then the member is bound by this opinion during European Union negotiations and voting. Deviation is only admissible for imperative foreign and integrative policy reasons.

(3) If the competent member of the Federal Government wishes to deviate from an opinion by the National Council pursuant to paragraph 2 above, then the National Council shall again be approached. In so far as the juridical act under preparation by the European Union would signify an amendment to existing Federal constitutional law, a deviation is at all events only admissible if the National Council does not controvert it within an appropriate time.

(4) If the National Council has pursuant to paragraph 2 above delivered an opinion, then the competent member of the Federal Government shall report to the National Council after the vote in the European Union. In particular the competent member of the Federal Government shall, if deviation from an opinion by the National Council has occurred, without delay inform the National Council of the reasons therefore"[15].

The national dispositions of Belgium, through the article 168 dispose "the information of Parliament`s Chambers when the negotiations regarding a review of European Union Treaties start. They have to be informed about the new treaty before it has been signed." The Constitution of Belgium anticipates (article 105 paragraph 3) the obligation that the Council of Ministers has to

[15] Chamber of Deputies, Department of legal studies, Study Constituional, 2010, p.2

inform the National Congregation regarding Belgium`s obligations that come from its quality of member of European Union:

Article 105 paragraph (4) mentions expressly the Council`s duty to inform detailed and in advance the National Congregation regarding its actions in the context of participating to the adopting process of law-making projects of European Union. "If participating at elaboration and adoption of law-making projects inside European Union, the Council of Ministers informs the National Congregation in advance and in detail regarding its actions. Up to now it was not adopted any special law that details the procedure Belgium would exercise its vote concerning the conformation for the principle of subsidiarity in elaborating and adopting legislative european acts"[16].

Regarding Czech Republic, "according to article 10(b) from the Constitution, the Government has the duty to inform the Parliament repeatedly and in advance about the aspects referring to the obligations resulted from Czech Republic`s quality as member to an international organization. The Parliament`s Chambers express their notice about the decisions of such an international organization or institution accurately through the standing orders. Also, the article decides that the competences can be assigned through a law concerning the principles in those reports area of common organ of the Chambers"[17].

"According to the paragraph 20 from the Constitution, the prerogatives that authorities of Denmark have can be transferred to the international authority invested through a mutual agreement with other states, the purpose being promoting the international law and co-operative rules. To adopt a law-making project a majority of 5/6 of all Parliament`s members is needed (Folketing). If this majority is not obtained, but there is the majority needed to adopt an ordinary law, and if the Government continues to defend the law project, it will be subjected to the poll, respecting the rules regarding organizing the referendum"[18]

The article 93 from Finland`s Constitution mentions "The Government is responsible for the national preparation of the decisions to be made in the European Union, and decides on the concomitant Finnish measures, unless the decision requires the approval of the Parliament. The Parliament participates in the national preparation of decisions to be made in the European Union, as provided in this Constitution."

„The Parliament participates in the national preparation of decisions to be made in the European Union, as provided in this Constitution. Concerning establishing Parliament`s position, the Government is obligated to communicate immediately the motions mentioned previously. The motions are to be debated in the Great Commission and in one or more special commissions that are obligated to show reports to the Great Commission.

The Foreign Affairs Commission debates motions that have as goal foreign policy and security. When needed the Great Commission or Foreign Affairs Commission can emit a report on the motion to the Government. Plus, the President`s Conference can decide if the motion is debated in plenum, when no decisions will be made by the Parliament.

The Government is forced to deliver to permanent commissions all the information needed for the debates concerning formulated motions inside European Union. Also, the Great Commission and the Foreign Affairs Commission must be updated regarding the Government`s position about the analyzed issues.

According to article 97, the Great Commission must receive reports from the Government concerning the problems debated inside European Union. The president`s conference decides if any of those reports must be debated in plenum, but those debates do not end with Parliament taking any decision.

[16] Chamber of Deputies, *c.w.*, p.3
[17] Chamber of Deputies, *c.w.,* p.3-4
[18] Idem

The Prime-Minister is obligated to deliver to the Parliament or to any parliamentary commission information about problems that will be debated inside European Council. The competent commission emits a report addressed to the Government, based on reports and information previously mentioned"[19].

In France "Title XV of the Constitution, titled-About the European Union, was amended by Constitutional Law no. 2008-103 of February 4th 2008 in order to allow the ratification of the Lisbon Treaty and establish a constitutional basis for new prerogatives recognized in national parliaments. Two new articles were introduced, 88-6 and 88-7.

According to Article 88-1, "The Republic that participates in the EU consists of countries that have freely chosen to exercise certain powers of their common pursuant to the Treaty on European Union and the Treaty on the Operation of the European Union, as reflected in the Treaty signed in Lisbon on December 13th 2007 ".

According to Article 88-4, "The Government presents the National Assembly and the Senate the draft European legislative acts and other projects or proposals of EU acts, after being received from the EU council. According to the manner prescribed by the regulations of each Assembly (Chambers of Parliament), European resolutions can be voted, outside the sessions if necessary, on projects or proposals referred to, as well as any documents coming from an EU institution. It states that "within each parliamentary Assembly, a committee responsible for European affairs will be established".

Article 88-5 states that any bill authorizing the ratification of a treaty on the EU accession of a State should be subject to referendum by the President of the Republic. However, by vote of a resolution adopted in an identical form by each of the Assemblies by a majority of three fifths, the Parliament can authorize the adoption of a Bill in accordance with the procedure referred to in Article 89, Paragraph 3 of Constitution17.

According to Article 88-6, "The National Assembly and the Senate may issue a reasoned opinion on the conformity of a draft legislative act with the principle of subsidiarity; the opinion is addressed by the President of the Assembly concerned to the Presidents of the European Parliament, the Council and the European Commission; also, the Government is informed. Each Assembly may appeal to the Court of Justice of the European Union against a European legislative act for violating the principle of subsidiarity; this action is transmitted to the ECJ by the Government. To this end, resolutions may be adopted, according to the initiative and the discussions set by the regulation of each Assembly. A ."Legal action is initiated at the request of sixty deputies or sixty senators 18 ".

Article 88-7 states that the Senate and the National Assembly (the Parliament) may oppose, by voting a motion adopted in identical terms by the Chambers, to the changing of the rules for the adoption of the EU acts - regarding the simplified revision of treaties and judicial cooperation in civil matters through the TEU and the TOEU "[20].

As for Germany, "as primary disposition regarding the participation of this EU State Member, Article 23 of the Fundamental Law (Constitution) states that, in order to establish a united Europe, Germany shall participate in the development of the European Union which is committed to the democratic, social and federal principles of the state of law and to the principle of subsidiarity and which ensures a level of protection of fundamental rights essentially comparable to that granted by the Basic Law. To this end, the Federation may transfer the powers of sovereignty, by law, with the consent of the Bundesrat. The Establishment of the European Union, as well as the changes of its

[19] Constitution of Finland, art. 96
[20] Chamber of Deputies, *c.w.*, p.5

treaties and of the comparable regulations, changes that either complete the German Fundamental Law or allow such changes and additions, are subject to the rules of Article 79, paragraphs (2) and (3) [amending the Constitution].
Bundestag and the Länder, through the Bundesrat, may participate in EU affairs. The federal government has an obligation to inform the Bundestag and the Bundesrat, comprehensively and as early as possible.

Before participating in the adoption of the EU legislation, the federal government is obliged to give the Bundestag the opportunity to express its position. During negotiations, the federal government shall take into consideration the position of the Bundestag; the details will be established by law.

Bundesrat participates in the federal decision-making process as long as it is competent to participate in the appropriate business internally or to the extent in which the matter falls within the internal competence of the Länder.

To the extent that, in a matter within the exclusive competence of the Federation, Länder interests are affected, as well as in other matters, as long as the Federation has legislative power, the federal government is obliged to take into account the position of the Bundesrat. As far as the powers of the Land, the structure of Land authorities or their administrative procedures are being affected, the position of the Bundesrat must be taken into account to the highest extent possible, under the federal responsibility for the nation as a whole. In matters which can increase costs or reduce revenues for the federation, the consent of the federal government is needed.

When the exclusive legislative powers of the Lands in matters of education, culture or broadcasting are affected, the exercise of the rights belonging to the Federal Republic of Germany, as an EU Member State, will be delegated by the federation to a Land representative designated by the Bundesrat.

These rights shall be exercised with the participation and coordination of federal government, their performance must comply with the federal responsibility for the nation as a whole.

The details of the above provisions are regulated by law, requiring the consent of the Bundesrat.

Article 24 of the Fundamental Law brings under regulation the transfer of the prerogatives of sovereignty. The Federation may transfer, through a law, such prerogatives of sovereignty to international organizations.

To the extent to which provinces are empowered to exercise state powers and perform state functions, they can transfer, with the federal government's agreement, the sovereign prerogatives to the transboundary institutions of the neighbouring regions.

In order to maintain peace, the Federation may join a system of mutual collective security; in doing so, she will consent to limitations of the prerogatives of sovereignty needed in order to lead to and ensure a lasting peace in Europe and among the peoples of the world. To settle disputes between states, the federation adheres to agreements that establish the general international arbitration, comprehensively and mandatory.

Article 45 of the Fundamental Law states about the EU Affairs Committee. The Bundestag shall appoint an Affairs Committee of the European Union and authorize the commission to exercise its rights specified in Article 23 of the Fundamental Law in its relations with the federal government.

Article 50 establishes the participation of the Lands, through the Bundesrat, in the legislative and administrative procedures of the federation in matter regarding the European Union. In matters on the European Union, the Bundesrat will establish a Chamber for European Affairs, whose decision shall be deemed to be decisions of the Bundesrat "[21].

The Greek Constitution, revised on May 27th, 2008, states in Article 70 about "the obligation to bring under regulation, in the Statute of organisation and functioning of the Parliament,

[21] Chamber of Deputies, *c.w.*, p.6-7

of the procedure by which the Parliament is informed by the Government on matters covered by the legislative proposals of the EU institutions and on their debates."

In the Republic of Ireland, "the law on the 28th Amendment of the Constitution in 2009, promoted (by referendum) in order to ratify the Lisbon Treaty, has a number of important provisions regarding the participation of this State Member in the European Union, stating that<< Ireland reaffirms its commitment to the European Union in which member states of this Union work together to promote peace, common values and welfare of their peoples>>.

The State may exercise the following options and powers specified in the Treaty of Lisbon provided a prior approval by both Houses of Parliament (Oireachtas) of that decision, regulation or law was given:

- Enhanced cooperation, referred to in Article 20 TEU;
- Protocol. 19 on integrating the Schengen acquis in the EU;
- Protocol. 21 on the position of the United Kingdom and Ireland regarding the area of freedom, security and justice, including the option of applying this protocol to cease, in whole or in part, on Ireland.

Also, the state can agree on decisions, regulations or other laws:

- Under the TEU and TOEU, which authorizes the EU Council to decide differently than unanimously;
- Under these treaties, which authorizes the adoption of the ordinary legislative procedure;
- Under Article 82 (2) (d) TOEU, Article 83 (1) paragraph (3) TOEU and Article 86 (1) and (4) TOEU, for space of freedom, security and justice.

The State can not adopt a decision already adopted by the European Council in order to establish a common defense under Article 42 TEU, situation in which the common defense would include Ireland"[22].

"The Constitutional Law on the status of Lithuania as member of the EU IX-2343, to which Article 150 of the Constitution refers to, establishes rules of constitutional powers in relation to EU matters. The Government informs the Parliament (Seimas) on proposals for the adoption of Community acts. The Government is obliged to consult with Seimas on matters of its competencies. The Parliament may recommend a certain position of the Lithuanian Government on those proposals. According to the Seimas Regulation, the Committee on European Affairs of the Seimas Committee on Foreign Affairs may present to the Government the Seimas opinion on the proposals for the adoption of Community acts. The Government will consider the recommendations or opinions presented by the Seimas or by the committees and will inform the Seimas about their execution, according to the established procedure"[23]

In the case of Malta, "according to Article 65 of the Constitution, the Parliament may legislate for peace, order and good governance in accordance with full respect for human rights, generally accepted principles of international law and regional and international obligations of Malta, especially the obligations under the Treaty of Accession to the European Union (signed in Athens on April 16,2003)"[24].

Also in Article 7 of the Constitution of Portugal "a provision is found for the participation in the EU of this member state, meaning that Portugal shall take every effort to strengthen European identity and strengthen the actions of European states to democracy, peace, economic progress and justice in the relations between peoples.

In terms of reciprocity and respect for fundamental principles of a democratic state based on rule of law and the principle of subsidiarity and in order to achieve economic, social and territorial

[22] Chamber of Deputies, *c.w.*, p.7
[23] Chamber of Deputies, *c.w.*, p.8
[24] Chamber of Deputies, *c.w.*, p.9

cohesion in an area of freedom, security and justice and the definition and implementation of foreign policy, security and defense policy, Portugal may enter into agreements in order to exercise jointly or in cooperation with EU institutions, the powers needed to build and deepen the European Union.

Article 8 [International law] states that the treaties governing the European Union and the rules adopted by its institutions in discharging their responsibilities apply to the internal national law in accordance with the Portuguese law and the fundamental principles of a democratic state based on rule of law.

Article 33 regulates the expulsion, extradition and asylum, a provision which states the application on matters of extradition of the rules regarding the judicial cooperation in criminal matters adopted by the European Union.

According to Article 112, the transposition of EU legislation and other legislations in national legal system may take the form of a law, a decree or order of a regional legislative decree.

Article 161 specifies the responsibility of the Assembly of the Republic to rule, within the law, on matters that are being debated by EU bodies, matters which are under the exclusive legislative competence of the Assembly.

Also, according to Article 163, the Assembly is responsible for supervising and examining Portugal's participation in building the European Union.

In his political performance, the Government shall respond, in relation to articles 161 and 163 of the Constitution, by providing information to the Assembly on the construction of the EU (Article 197).

Article 227 establishes the powers of the autonomous regions, including from the point of view of European businesses "[25].

The Constitution of the Republic of Slovenia "in Article 3a states that during the taking of legal norms and decisions of international bodies to which Slovenia has transferred part of its sovereign rights, the Government is obliged to inform the National Assembly on proposals for such acts and decisions as well as on their work. The National Assembly may adopt positions thereon, and the Government is obliged to take account of these positions in their activities "[26].

Slovakia "may transfer the practice of a part of its rights to the European Communities and the European Union under Article 7 of the Constitution, through an international treaty ratified and promulgated in accordance with the procedure regulated by law, or under such treaty. Legally binding acts of the European Communities and European Union laws have priority over Slovakia. Legally binding documents that require the implementation will be adopted by law or by emergency decree under Article 120 (2) of the Constitution"[27].

In Sweden "Article 6 of the Instrument of government has required the Government to continuously inform the Parliament (Riksdag) and consult with the bodies appointed by the Riksdag on developments on the European Union.The Parliament Act establishes detailed rules on the obligation of informing and consulting"[28].

In Romania, the constitutional provisions on the procedure for cooperation with European Union laws are general, art. 148 decides that:

"(1) Romania's accession to the Constitutive Treaties of the European Union, in order to transfer certain powers to Community institutions and to exercise jointly with other member states the abilities stipulated in such treaties, is achieved by adopted law in the joint session of the Chamber of Deputies and Senate, by a majority of two thirds of deputies and senators.

[25] *Idem*
[26] Chamber of Deputies, *c.w.*, p.10
[27] *Idem*
[28] *Ibidem*

(2) Following the accession, the provisions of the Constitutive Treaties of the European Union and other mandatory community regulations, have precedence over the provisions of the national laws, in compliance with the Act of Accession.

(3) The provisions of paragraphs (1) and (2) shall apply accordingly to the accession of the acts of revision of the Constitutive treaties of the European Union.

(4) The Parliament, the President of Romania, the government and the judicial authority shall guarantee the obligations resulting from the accession act and the provisions of paragraph (2).

(5) The Government shall send the two Chambers of Parliament the draft mandatory acts before they are subject to approval by EU institutions".

According to Art. 148 of the Constitution, the Romanian Parliament adopted, for verification of European law through the principle of subsidiarity, Decision no. 11/2011. The procedure for the determination of the compliance of the legislative act with the principle of subsidiarity works as follows: the "following documents are subject to parliamentary review of the European Union:

a) draft laws eligible for subsidiarity test under Protocol. 2 of the Lisbon Treaty in order to establish the compliance with or the breach of the principle of subsidiarity;

b) draft legislation of the European Commission, EU Council and European Parliament and the European Commission's consultation documents, selected by the Chamber of Deputies in accordance with their political, economical, social, financial or legal relevance.

c) projects of EU legislation for which the Government of Romania draw general terms"[29]"Parliamentary scrutiny is completed by developing one or more documents or acts of the Chamber of Deputies, as follows:

a) reasoned opinion when identifying a failure to comply with the principle of subsidiarity by a legislative proposal of the European Union;

b) opinion, in the case of fund reviewing of the legislative proposals and consultation papers, which express the views of the Chamber of Deputies;

c) information report on the documents examined, at the initiative of the European Affairs Committee of the Chamber of Deputies, to which it appoints a rapporteur or a group of reporters;

d) minutes of debate or hearings organized by the concerned committees in joint or separate meetings"[30].

"The Chamber of Deputies receives the referral letter that initiates the 8-week procedure that assesses whether the proposed legislation of the principle of subsidiarity is complied with. The Letter of complaint is registered at the Department of Community law.

The Department of Community law shall notify the Permanent Bureau, (...). The Standing Bureau shall forward the proposal of the permanent legislative to the committee or committees as proposed by the Department of Community Law and by the European Affairs Committee of the Chamber of Deputies, within 7 days of receipt of written advice from the Department of Community law. The Permanent Bureau may decide to transfer the legislative proposal to other standing committees than those proposed by the Department of Community law. The transmission of documents is performed simultaneously to all standing committees involved as well as to the European Affairs Committee of the Chamber of Deputies. If the Standing Bureau is not met within seven days of receipt of the legislative proposals from the Department of Community law or a decision has not been reached, within this period, regarding the transmission of documents and European legislative proposals, the transmission is made by the Chairman of the Chamber of Deputies, with subsequent notification of the Standing Bureau.

The Standing Committees shall observe, in their examination, the compliance with the principles of subsidiarity and proportionality. The examination is completed as follows:

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[29] Chamber of Deputies, Decision no. 11/2011,art. 3

[30] Chamber of Deputies, Decision no. 11/2011,art. 4

a) in case of compliance with the principle of subsidiarity, the Standing Committee shall prepare a report containing the main elements of the debate, the vote expressed, if any, and finding the presence of the principle of subsidiarity. The minutes are provided for information to the Chamber of Deputies Standing Bureau and to the Department of Community law;

b) in case of non-compliance with the principle of subsidiarity, the Standing Committee shall prepare a draft of the reasoned opinion.

In case of detection of non-compliance to the principle of subsidiarity by a legislative proposal of the European Union, subject to the subsidiarity test, the Standing legislative committee and the European Affairs Committee of the Chamber of Deputies immediately shall warn the Department of Community law to convey the information to the Standing Representative of the Chamber of Deputies within the European Parliament and to convey this information to the national parliaments through its communication platform IPEX, mentioning that the reasoned opinion is in draft form and it does not represent an official view of the Chamber of Deputies.

The Standing Commission shall send the draft for the reasoned opinion or the report to the Committee on European Affairs of the Chamber of Deputies no later than the 40th day following receipt of notification from the European Union institutions.

The European Affairs Committee of the Chamber of Deputies shall debate and draft, as appropriate, the following documents:

a) final draft reasoned opinion, integrating the views expressed by the standing committees, when detecting the non-compliance with principle of subsidiarity;

b) an information note that is attached to the minutes of the standing committees and the minutes of the debate of the European Affairs Committee of the Chamber of Deputies, when detecting the compliance with the principle of subsidiarity.

The European Affairs Committee of the Chamber of Deputies shall submit the final reasoned opinion draft or the information note from the Standing Bureau of the Chamber of Deputies no later than the 47th day following receipt of notification of the EU institutions. The final reasoned opinion draft or the information note shall be sent to the Department of Community law for registration.

In the case of reasoned opinion draft for infringement of the principle of subsidiarity, the Standing Bureau:

a) may propose the addition to the agenda of the Chamber of Deputies for debate and approval of a final reasoned opinion draft. The Chamber of Deputies shall vote on the final reasoned opinion draft in their first meeting of its inclusion on the agenda, but no later than 56 calendar days following the receipt of notification from the EU institutions. Reasoned opinion shall be considered adopted by vote of the present majority. The Decision of the Chamber of Deputies of the approval of the reasoned opinion is published in the Official Gazette of Romania, Part I.

The Chairman of the Chamber of Deputies shall sign the reasoned opinion and shall send it to the EU institutions and the Government of Romania;

b) decides to convey the reasoned opinion, as drafted by the Commission for European Affairs, to the Romanian Government and the European Union institutions. The Chairman of the Chamber of Deputies shall sign the reasoned opinion and shall send it to the EU institutions and the Romanian Government.

The reasoned opinion on subsidiarity infringement is transmitted immediately by the Department of Community law, to the Standing Representative of the Chamber of Deputies in the European Parliament and are loaded to the IPEX platform.

If the compliance to the principle of subsidiarity is met, the Department of Community law shall communicate through the IPEX platform the completion of the review and the compliance with the principle of subsidiarity "[31].

[31] Chamber of Deputies, Decision no. 11/2011, art. 14-27.

Currently, there is a bill in the legislative circle on the cooperation between the Parliament and the Government regarding European affairs (PLx no. 3/2012) establishing a complex procedure of cooperation between the legislative and the executive power on matters of adoption and submission to the European institutions of views, opinions or notes on the draft European legislation, by applying protocols no. 1 and No. 2 of the Treaty of Lisbon.

3. Conclusion

(...) The doctrine has supported the thesis that the subsidiarity, as established by the Maastricht Treaty, further enhanced by modifying treaties, is unable to meet its objective: the problems that subsidiarity wishes to solve are not really the ones that the European Union is actually facing. First, in its present formulation, subsidiarity stipulates that the European institutions have to refrain from taking action if the objectives pursued by it can be achieved by the Member States. However, that was not the stake that Member States had in mind when forcing the entrance of this principle in the primary treaties. Instead of providing a method likely to weigh the interests of the States and Union's, this regulation takes on the Union's objectives, favors their absolute accomplishment and it merely shows who will be entrusted with the execution effectively. (...) As long as the Member States consider analyzing a measure to be adopted in terms of the effects it will produce in any field, effects that realize the extent to which the measure will limit its powers, the European institutions assess the extent to which it will contribute to achieving common goals.

(...)The pre-legislative examination, which must decide whether the measure to be adopted satisfies the requirements of the principle is, however, ineffective as the principle itself. On one hand, the problem to be solved (by the contemplated action) is determined before starting the actual control of subsidiarity. On the other hand, it is obvious that the possibility for Member States to solve sufficiently the problem at hand is considered exclusively from the perspective of the problem itself and the community purpose. Also, the impact of the measure on the national system is taken into consideration fairly marginal, out of the whole process, lacking any explicit considerations related to national autonomy and any measurements of the Union's goals, and of the national ones respectively.

Currently, the European system evolution has come to affect the most sensitive areas of traditional national competence.

In this context the core developments of European law is to restore the limit "in which, legitimately, the Union may legislate, namely those in which the autonomy of Member States must imperatively be respected"[32].

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[32] Raluca Bercea – *c.w.* , p. 339-341