

The False Promise of Decentralization in EU Cohesion Policy

Fernanda Nicola*

The European Union (EU) is “going local” by taking decentralization of power seriously in order to create greater effectiveness for European law and policy, especially with respect to its economic development or cohesion policy strategies. In this vein, the Treaty of Lisbon has modified the subsidiarity principle now including a “regional and local” dimension while offering new legal and political safeguards to protect subnational actors from the reach of EU law. However, in EU cohesion policy, cities, regions, and Länder in the different Member States are ‘lumped together’ into a third-level Europe that does not differentiate among these subnational actors. In addition, despite the attempt to connect Europe to its subnational level to enhance local autonomy and territorial cohesion, European courts do not always recognize the local level as independent from their Member State. As a result, EU cohesion policies attempting to narrow the welfare imbalances among European regions are not territorially attuned, flexible enough, or equipped with accountability mechanisms capable to address the development problems they are designed to solve.

Scholars have shed light on the invisibility of local actors by proposing to strengthen their “input legitimacy” (process and participation) through greater representation before EU decision-making processes or European courts. By focusing on EU-wide procedures instead of understanding how different legal and geographical factors characterize each territory, EU scholars have refrained from addressing whether increasing decentralization is accomplishing the desired development goals and improving the “output legitimacy” (effectiveness of regulation) of EU institutions.¹ This Article instead offers a “thick” description of EU cohesion policies aimed at creating economic development and territorial cohesion by disbursing EU funding to the European peripheries. Rather than assessing if these policies enhance local autonomy and decentralization through EU-local cooperation, I demonstrate that often they foster centralization and produce new conflicts among heterogeneous subnational actors, Member States, and the EU. Through a textured account of local power in Germany, Greece, and Italy, I suggest that a more contextualized and needs-based approach to cohesion policies, which acknowledges territorial and socio-economic disparities in each region, would anticipate and evade the shortcomings of current EU cohesion policy. This Article departs from notions of local autonomy and decentralization of power to improve the “input legitimacy” of EU institutions by suggesting that the findings on cohesion policy—the need to pay greater attention to local heterogeneity and to create accountability mechanisms to monitor disbursement policies—are important lessons about local governance in the EU that should “travel” to other regulatory areas.

* © 2011 Fernanda Nicola. Associate Professor, Washington College of Law, American University. Paper Presented at the following conferences: “The State of the European Economic Union” organized by the EU Center of Excellence, American University, Washington DC (Nov. 2010), at Tulane Law School, New Orleans, at the conference on *The European Union 20 Years After Maastricht—Transatlantic Perspectives* (Mar. 2011), and the Law and Society Association in San Francisco (June 2011). I am grateful to Bill Davies, Jane Bestor, Daniela Caruso, Jerry Frug, Paul Nihoul, Marc Pollack, and Brishen Rogers for their comments and to Paul Oliver Eisler for his excellent research assistance. Errors are mine only.

1. See FRITZ W. SCHARPE, COMMUNITY AND AUTONOMY: INSTITUTIONS, POLICIES AND LEGITIMACY IN MULTILEVEL EUROPE 176 (2010) (defining input and output democracy).

I.	INTRODUCTION	66
II.	THE EU IS “GOING LOCAL”	69
	A. <i>The Treaty of Lisbon Reforms Enhance Local Autonomy</i>	72
	1. The Local Dimension of the Subsidiarity Principle	72
	2. Reforming the Committee of the Regions	77
	B. <i>Scholarly Approaches to Local Autonomy in the EU</i>	84
	1. More Visibility to Local and Regional Actors in the EU	84
	2. New Governance Advocates	87
III.	THE FALSE PROMISE OF LOCAL AUTONOMY IN DEVELOPMENT POLICY	93
	A. <i>Cohesion Policy To Reduce Wealth Disparities in the Peripheries</i>	95
	1. The Disbursement of EU Funds	95
	2. Challenges and Reforms of Cohesion Policy	100
	B. <i>Three Case Studies: Why the Context Matters</i>	108
	1. Lack of Legal Standing for Sicily	108
	2. Intranational Heterogeneity: German <i>Länder</i>	115
	3. Intralocal Heterogeneity: Greek Cities	118
IV.	CONCLUSION	122

I. INTRODUCTION

Today cities, provinces, regions, and *Länder* are affected by the changes triggered by EU law and policy. Lawyers and scholars have increasingly acknowledged and investigated such changes by showing the connection between Europe and its local communities. Local differences have become an integral part of the EU decentralization strategy through slogans such as “Europe of the regions,” “sustainable urban growth,” and of course, the EU motto “united in diversity.”² In promoting this strategy, technocrats, lawyers, and politicians have lumped together cities, regions, provinces, and *Länder* into a single category of “third level Europe.”³ However, this strategy of lumping subnational actors often conceals, rather than clarifies, what the effects of EU law and politics are on the different local actors. For instance, this

2. See *United in Diversity*, EUR. COMM’N, http://europa.eu/abc/symbols/motto/index_en.htm (last visited Sept. 21, 2011) (remarking that “‘United in diversity’ is the motto of the European Union”).

3. See *THE REGIONAL DIMENSION OF THE EUROPEAN UNION: TOWARDS A THIRD LEVEL EUROPE?* (Charlie Jeffery ed., 1997).

lumping strategy hides the fact that each Member State distributes power differently among its local actors. As a result, it is difficult to understand how different constitutional regimes and different territorial problems influence the effects of EU cohesion policy and more in general of EU regulation at the local level.

This Article demonstrates the impact of EU cohesion policy on subnational actors through a comparative study of their effects in Greece, Germany, and Italy. While Germany is a federal state with the highest degree of local autonomy for its *Länder*, Greece is a unitary state in which prefectures and cities have little autonomy. As a middle ground between Greece and Germany, Italy has experienced, in the last ten years, its regions gaining more autonomy from the central government. A textured account shows the way in which EU cohesion policy, aiming to narrow territorial wealth disparities, has empowered or disempowered local governments in the different Member States.⁴

In analyzing the theoretical underpinnings of EU cohesion policy, I adopt some insights from U.S. local government law scholarship. First, local autonomy does not happen in a vacuum because both state and federal background regimes structure the decision-making power of subnational actors.⁵ Likewise, EU law and policy redistribute power among local actors in a way that is highly dependent both on supranational and state background rules as well as on the intranational distribution of economic and cultural power within each state.⁶ Thus, local governments in the EU have a wide range of possibilities to cooperate or resist the implementation of EU regulation and collaborate or collide with Brussels in implementing European policies.⁷ Second, a

4. For a differentiation between unitary, federal and regional states, see VIVIEN A. SCHMIDT, *DEMOCRACY IN EUROPE: THE EU AND NATIONAL POLITICS* (2006).

5. See GERALD E. FRUG & DAVID J. BARRON, *CITY BOUND: HOW STATES STIFLE URBAN INNOVATION* (2008).

6. Despite some important comparative federal scholarship on EU and U.S. federal models, no comparative federalism author has focused on these background regimes and the increasing intranational heterogeneity among local actors. See Ernest A. Young, *Protecting Member State Autonomy in the European Union: Some Cautionary Tales from American Federalism*, 77 N.Y.U. L. REV. 1612, 1654 (2002); Daniel J. Meltzer, *Member State Liability in Europe and the United States*, 4 INT'L J. CONST. L. 39, 39-43 (2006); George A. Bermann, *Taking Subsidiarity Seriously: Federalism in the European Community and the United States*, 94 COLUM. L. REV. 331 (1994); Daniel Halberstam, *Comparative Federalism and the Issue of Commandeering*, in *THE FEDERAL VISION: LEGITIMACY AND LEVELS OF GOVERNANCE IN THE UNITED STATES AND THE EUROPEAN UNION* 213 (Kalypso Nicolaidis & Robert Howse eds., 2001).

7. See Gerald E. Frug, *Empowering Cities in a Federal System*, 19 URB. LAW. 553, 554 (1987) (showing that federal-local cooperation does not necessarily empower local actors by creating greater local autonomy, but rather, it can backfire by reinforcing state or federal control of local decision making).

contextual and geographical understanding of each territory is important to achieve an economic development strategy while avoiding backlashes against the “spatial economic structure that is resistant to alteration.”⁸ Because decentralization does not happen in a legal or geographical vacuum, rather there are legal and territorial structures already in place that will be key to understanding beforehand in order determine the effects of any policy aiming to empower the local level through either explicitly redistributive policies (cohesion) or other regulatory strategies (i.e., environmental or competition policy).

To understand the commitment to decentralization of power in cohesion policy, Part I explains the changes introduced by the Treaty of Lisbon vis-à-vis the subsidiarity principle and the enhanced role of the Committee of the Regions (CoR) in giving its opinions on EU cohesion policy. It then analyzes how different scholarly visions of decentralization have influenced current proposals to reform EU cohesion policy.⁹ Despite the different approaches, both visions seek to legitimize European integration from below by creating a stronger connection between Brussels and its local communities.¹⁰ In lumping together subnational actors into a third-level Europe, however, scholars are far more preoccupied with the processes of achieving local autonomy rather than the substance of the development and regional policies they are advocating.

Part II offers a textured account of the effects of cohesion policies in an Italian region, a German *Länder*, and three Greek cities. The aim is to show that EU-local cooperation in the name of decentralizing power can create positive as well as negative consequences for local development. In some cases, EU-regional cooperation can ameliorate local economic conditions; in others, however, it can backfire all together and ultimately it substitutes supranational for state control of the region.¹¹

In departing from local autonomy demands, this Article shows that in order to achieve effective economic development by narrowing wealth imbalances among regions, cohesion policy ought to devote greater

8. See Richard C. Schragger, *Decentralization and Development*, 96 VA. L. REV. 1837, 1888-93 (2010) (arguing that government policies aimed at improving economic performance in particular areas tend not to further decentralization).

9. J.H.H. Weiler, *The Transformation of Europe*, 100 YALE L.J. 2403 (1990-1991).

10. Richard T. Ford, *Law's Territory (A History of Jurisdiction)*, 97 MICH. L. REV. 843 (1998-1999). In embracing decentralization, cultural difference and local diversity, these lawyers reproduce a “paradoxical differentiation” by which the constant production of diversity and localism is not the enemy but rather “the child of the modern state.” See Yishai Blank, *Localism in the New Global Order*, 47 HARV. INT'L L.J. 263 (2006).

11. See Jerry Frug, *Decentering Decentralization*, 60 U. CHI. L. REV. 253 (1993); GERALD E. FRUG, *CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS* (1999).

attention to the geographic, social, and economic disparities characterizing each European periphery. In reassessing the decentralization commitments of EU cohesion policy, this Article proposes a more tailored analysis of local heterogeneity, territorial conflicts, and better accountability mechanisms to manage EU-funded projects in different regions.

II. THE EU IS “GOING LOCAL”

Since the mid-1980s, the Commission has launched numerous initiatives, buttressed by a large body of academic literature, to connect local governments, such as cities, provinces, and regions, to the process of European integration.¹² Local autonomy and decentralization strategies were deployed by Brussels as a form of resistance vis-à-vis the homogenizing and globalizing pressure of the single market at the expense of local commerce.¹³ With the Treaty of Maastricht expanding European competences and at the same time introducing the subsidiarity principle into the treaty, the newly created EU did not present a threat but rather an enhancement of local autonomy and decentralization.¹⁴ Cohesion policy was already part of the Treaty, article 158 EC, connecting Brussels to the regions “lagging behind” by means of a disbursement mechanism such as the European Regional Development Fund (article 160 EC, not article 176 of the Treaty on the Functioning of the European Union (TFEU)).

Cities, regions, provinces, and *Länder* in each Member State have contributed to the transformation of Europe by supporting or resisting the various patterns of legal integration that took place in the last fifty years. In the early stages of integration until at least the early 1990s, however, local governments were invisible to the European architecture, and they rarely appeared in mainstream scholarly accounts.¹⁵ Nonetheless, some

12. See, e.g., PATRICK LE GALÈS, *EUROPEAN CITIES: SOCIAL CONFLICTS AND GOVERNANCE* (2002).

13. See Andy Storey, Ctr. for Dev. Studies, Presentation at the National University of Ireland Maynooth Conference: The European Project: Dismantling Social Democracy, Globalising Neoliberalism (Apr. 3, 2004).

14. See *Urban II: Context*, EUR. COMM’N, http://ec.europa.eu/regional_policy/urban2/intro_en.htm (last visited Sept. 21, 2011) (explaining that the *Framework for Action for Sustainable Urban Development* adopted by the Commission in 1998 “recognises the importance of the urban dimension in Community policies, and highlights in particular the possibilities offered by the regional development programmes”).

15. J.H.H. Weiler’s *The Transformation of Europe* emphasized the role of Member State’s executives and the European Court of Justice (ECJ). In Weiler’s account, the transformation of Europe was a reverse of the classic examples of regions empowered through decentralization in Italy, Spain, and France. The Treaty of Maastricht (1992) brought to the surface the unstable

commentators noted that the endogenous analysis of the “Transformation of Europe,” as described by Joseph H. Weiler, omitted the behavior of national bureaucracies and domestic courts, oscillating from resisting to endorsing European integration.¹⁶ In addition, regional policy was at the margin of European integration, especially for lawyers for whom “cohesion is still strikingly minor in judicial discourse.”¹⁷

By the 1990s, the EU was in a desperate search for solutions to solve its democratic deficit and increase the effectiveness of its legislation.¹⁸ Brussels launched institutional reforms to reach local communities while scholars wrote about the need for greater local participation in EU decision-making processes to improve their “input legitimacy.” Political scientists and lawyers aimed to connect local communities more explicitly to Brussels.¹⁹ Subnational actors would no longer be invisible, but rather would be active participants in setting the Commission’s legislative agenda and in implementing European Community (EC) policies. Regional governments became important interlocutors with Brussels through bodies such as the Assembly of European Regions, aiming at cooperating with the EU on development projects.²⁰ Soon after, not only regions, but also cities, organized several lobbying groups to become the interlocutors with the EU.²¹ Because

compromises of the single market and the democratic deficit whereby local governments reclaimed a loss of direct democracy in Europe. Weiler, *supra* note 9, at 2470.

16. See Henry Schermers, *Comment on Weiler’s The Transformation of Europe*, 100 YALE L.J. 2525 (1990-1991); Philip Allott, *The European Community Is Not the True European Community*, 100 YALE L.J. 2485 (1990-1991).

17. See Daniela Caruso, *Direct Concern in Regional Policy: The European Court of Justice and the Southern Question*, 17 EUR. L.J. 804 (2011).

18. The most common form of EU legislation is a directive that seeks to harmonize national legal regimes in a particular field. A directive is adopted by the Council and the European Parliament (EP) and proposed by the Commission according to article 294 of the Treaty on the Functioning of the European Union (TFEU) and the codecision procedure. Directives need to be transposed by the Member States into their national legal orders within two years to become fully effective. Consolidated Version of the Treaty on the Functioning of the European Union art. 294, Sept. 5, 2008, 2008 O.J. (C 115) 47 [hereinafter TFEU].

19. See THE REGIONS AND THE EUROPEAN COMMUNITY (Robert Leonardi ed., 1993); Joanne Scott, *Regional Policy: An Evolutionary Perspective*, in THE EVOLUTION OF EU LAW 625 (Paul Craig & Gráinne de Búrca eds., 1999).

20. The Assembly of European Regions was created in 1985 as an interlocutor for the regions with Brussels; today its NGOs represent over 300 regions in the EU and beyond, and lobby the European Parliament in Strasbourg. *History of the Assembly of European Regions*, ASSEMBLY OF EUR. REGIONS, <http://www.aer.eu/about-aer/history/history-of-the-aer.html> (last visited Sept. 2, 2011).

21. For instance, municipalities started early on to lobby Brussels in various forms, and in the mid-1980s, EURO CITIES represented a network of six main cities in Europe aiming to collaborate with the Commission on local projects. See *About Us*, EURO CITIES, <http://www.eurocities.eu/content/about/content.php> (last visited Sept. 2, 2011).

cities have tremendous symbolic power in the European imagination,²² the EU Council has enlisted cities as the key actors for integration, development, and sustainability in the Leipzig Charter.²³

Today the EU decentralization rhetoric lumps together a number of very different subnational actors such as metropolitan areas, towns, neighborhoods, and districts as well as regions, provinces, and cities in the homogeneous category of “third level Europe.”²⁴ Even though it might sound paradoxical, this attempt to decentralize power by the EU serves centralization purposes in the construction of a European identity.²⁵ In adopting Richard Ford’s insight, consolidation and centralization are not antithetical but rather they encompass jurisdictional subdivisions and differentiation. In Ford’s words, “[T]erritorial power is exercised not only through repression or exclusion of difference and centralization, not only through homogenization or assimilation to a mean, but also through the *production* of difference.”²⁶ Thus, the lumping rhetoric creates local differentiation in European integration which allows Brussels to address local autonomy and decentralization. At the same time, however, this Article argues that the “third level Europe” rhetoric conceals how supranational and state background rules structure the power of local actors to cooperate, resist, or trigger new conflicts in their interaction with their national governments and the EU.²⁷ The lessons learned from the problems arising in EU cohesion policy are valuable for other central regulatory areas in the EU where there is a

22. For an example of the city-state, see MARIO ASCHIERI, *LE CITTÀ-STATO* (2006). For an example of the cities in the Holy Roman Empire, see JOHANNES ALTHUSIUS, *POLITICA METHODICE DIGESTA* OF JOHANNES ALTHUSIUS (reprint 1979). Cities have a symbolic power in Western consciousness, which derives from the way the history and the geography of cities have shaped human relations over time. In particular, cities were at the center of the industrial revolution; urban rather than rural areas were where the economy has flourished in modern times. See FERNAND BRAUDEL, *A HISTORY OF CIVILIZATIONS* (Richard Maune trans., Penguin Press 1994) (1987). Second, there is a sociological understanding of the city as a longstanding example of a democratic association organizing the social and economic life of different groups of individuals in an urban space. See PIERRE BOURDIEU, *THE SOCIAL STRUCTURES OF THE ECONOMY* 12-13 (Chris Turner trans., 2005); *A HISTORY OF PRIVATE LIFE* (Philippe Ariès & Georges Duby eds., 1987); MAX WEBER, *ECONOMY AND SOCIETY* 1212, 1236 (Guenther Roth & Claus Wittich eds., 1968). Finally, the aspect of the city that is relevant for this Article is the legal one, namely how the law shapes and in turn is shaped by the economic and democratic choices made by local governments. See Frug, *supra* note 11, at 254.

23. See Leipzig Charter on Sustainable European Cities (EC), May 24, 2007, available at http://www.eu2007.de/en/News/download_docs/Mai/0524-AN/075DokumentLeipzigCharta.pdf.

24. See URBACT II: OPERATIONAL PROGRAMME CALL FOR PROPOSAL FOR THE CREATION OF A WORKING GROUP ON THE IMPLEMENTATION OF THE LEIPZIG CHARTER 7-8 (2009).

25. See Ford, *supra* note 10.

26. *Id.* at 906.

27. For a definition of city structures, see FRUG & BARRON, *supra* note 5, at 3.

need for Brussels to cooperate with local actors in implementing EU law and policy. A better understanding of local heterogeneity and socioeconomic disparities within each Member State is central to improving EU Regulatory strategies for development as well as environmental or competition policies.

A. *The Treaty of Lisbon Reforms Enhance Local Autonomy*

The European commitment to decentralization and local autonomy was an important way to respond to the quests for greater legitimacy of supranational legislation and the democratic deficit sweeping the EC in the late 1980s.²⁸ The strategy of linking local communities to Brussels goes hand in hand with the expansion of EU competences and the completion of the establishment of a single market.²⁹ Despite the efforts by Brussels to include regions—and in ancillary ways other subnational actors such as cities and provinces in Community decision-making processes—the role for subnational actors was rather limited in many aspects. The Treaty of Lisbon architecture has created new possibilities to strengthen the principle of subsidiarity while opening new judicial avenues for the CoR, an assembly representing “third level Europe” in Brussels on behalf of localities. These new avenues for local actors to improve the “input legitimacy” of EC policies might change some of the dynamics between the regions and Brussels with respect to the implementation and the justiciability of EU cohesion policy.

1. The Local Dimension of the Subsidiarity Principle

Since the mid-1980s, decentralization was functional to European integration insofar as it responded to the demands of increasing the legitimacy and participation of local actors in supranational decision-making processes.³⁰ The involvement of local actors was a way through

28. The lack of local participation in EU policies created several tensions in European governance that commentators addressed as the well-known problem of “democratic deficit.” For a lack of input democracy and lack of European political debate, see Scharpf, *supra* note 1, at 323.

29. The Treaty of Maastricht in 1992 tipped the balance in favor of decentralization of power while seeking to achieve more legitimacy for the EU and expanded competences to regulate social aspects of the common market (environment, education, consumer, etc.). The European Community became the EU with the Treaty of Maastricht. This was committed to decentralization and it established the Committee of the Regions in articles 305-307 of the EC Treaty. TFEU arts. 305-307.

30. See SCHMIDT, *supra* note 4, at 158 (showing how the effects of EU decentralization reforms and their benefits for local governments ought to be analyzed field by field and with particular attention to the different internal allocations of powers in each Member State).

which the Commission sought a more successful implementation of its legislative and policy initiatives, especially in regulating the social aspects of the single market.³¹ For instance, EU directives in the environmental field often covered subjects that in certain Member States belonged to the competence of *Länder*, regional, and local governments. As a result, subnational governments were compelled to develop strategies to protect their competences and resist the harmonization process.

Because of the resistance and the lobbying of subnational actors, the Treaty of Maastricht (1992) set up some political safeguards for local power against centralization.³² The principle of subsidiarity incorporated into the Treaty aimed at protecting local powers in those areas where the Union shared its competence with the Member States.³³ When compared to the United States, George Bermann pointed out that in the EU, there is no need for judicial intervention in policing federal boundaries because the political safeguards of federalism have been proceduralized by the Treaty.³⁴ According to Bermann this shift from jurisdictional to procedural approaches created a unique mechanism for national and local political control of the EU legislature.³⁵ As Florian Sander elegantly

31. As the Community competences expanded so that Brussels could legislate over economic as well as social matters, the conflicts over EU versus Member States or even local competences were increasingly likely to happen. Despite the formal recognition of the limited legislative competences of the Community legislature on social matters, the increasing number of shared competences between the states and the Union began intensifying the reach of EU law and policy to what in many states are exclusive local competences. Similar to the federal conflicts that arise in United States on federal preemption and commandeering, these also emerged in the EU with the problematic enforcement of directives. These issues are more thoroughly addressed below. See Halberstam, *supra* note 6; see also *infra* Part II.

32. See Robert Schütze, *Subsidiarity after Lisbon: Reinforcing the Safeguards of Federalism?*, 68 CAMBRIDGE L.J. 525, 526 (2009).

33. With the constitutionalization of the principle of subsidiarity, first inserted in Single European Act (1986) and the creation of European citizenship in the Treaty of Maastricht (1992), supranational institutions such as the Commission and the European Parliament became more receptive to democratic concerns and in particular to greater decentralization demands. The Treaty also used a procedural approach to determine issues of subsidiarity, rather than substantive criteria. Treaty Establishing the European Community art. 5, Nov. 10, 1997, 1997 O.J. (C 340) 1 [hereinafter EC Treaty] (“In areas which do not fall within its exclusive Competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.”).

34. See George Bermann, *National Parliaments and Subsidiarity: An Outsider’s View*, 4 EUR. CONST. L. REV. 453, 454 (2008).

35. In the United States, the traditional political safeguards of federalism are inherent in the Senate’s role, even though such a role has been long discredited. On the other hand, the federalist revival of the Rehnquist and Roberts Courts has played a key role in policing federal power and reasserting state and local autonomy vis-à-vis Congress. In explaining the differences

explained, the EU system differs from the United States insofar as the subsidiarity principle creates a “second layer” of competences.³⁶ Article 5(2) of the Treaty of Maastricht defined subsidiarity by assessing the correct allocation of powers between the EU and the Member States through the concept of the “appropriateness of decision-making.”³⁷ Subsidiarity meant that in the realm of shared or nonexclusive competences, the EU could regulate only those matters that could not be achieved by Member States’ action.

The Subsidiarity Protocol in the Treaty of Amsterdam (1997) amended by the Convention Draft envisaged two main avenues of reform, a legislative and a judicial one.³⁸ With respect to the new judicial safeguards, the Protocol introduced a more explicit subsidiarity approach by requesting that the Commission forward its bills both to national parliaments and to supranational institutions.³⁹ These bills should “contain some assessment of the proposal’s financial impact” by justifying the reason why the objective is better achieved at the Union level, using qualitative and quantitative indicators.⁴⁰ With respect to the judicial avenue, the Protocol grants the European Court of Justice (ECJ) jurisdiction to decide cases based on infringement of the subsidiarity principle.⁴¹ The innovation is that national parliamentary chambers as

between EU and U.S. federal arrangements, George Bermann has sharply pointed out in the United States there is no working definition of federalism but rather “merely a generalized sense—even an intuition—as to the matters that are somehow, by their nature, inherently ‘local’ and those that are not. In place of what Europeans can present as a ‘subsidiarity analysis’, we have only a ‘federalism impulse’ to offer.” *See id.* at 454.

36. The first layer of EU legislative competence is the authority to adopt legislation in order to attain specific goals. A second layer of EU competences creates limits “within the existing framework of delegated legislative empowerment.” *See* Florian Sander, *Subsidiarity Infringements Before the European Court of Justice: Futile Interference with Politics or a Substantial Step Towards Federalism?*, 12 COLUM. J. EUR. L. 517, 527 (2006).

37. *See* EC Treaty art. 5(2); Gráinne de Búrca, *Reappraising Subsidiarity’s Significance after Amsterdam* (Harvard Jean Monnet Working Paper 7/99, 2000), available at <http://www.jeanmonnetprogram.org/papers/99/990701.rtf> (explaining that there is both a process and an outcome-oriented question beyond the notion of appropriateness of decision making); Margherita Poto, *Democracy and Europe: New Times, Old Dilemmas*, 13 EUR. PUB. L. 633 (2007); Costas Kombos, *Fundamental Rights and Fundamental Freedoms: A Symbiosis on the Basis of Subsidiarity*, 12 EUR. PUB. L. 433 (2006).

38. *See* Protocol on the Application of the Principles of Subsidiarity and Proportionality art. 1, 2004 O.J. (C 310) 207 (EU) (“Each institution shall ensure constant respect for the principles of subsidiarity and proportionality.”). More recently, the Treaty of Lisbon (2007) has incorporated these two reform proposals to address the structural inadequacies of the subsidiarity principle.

39. *Id.* art. 4.

40. *Id.* art. 5.

41. *Id.* art. 8.

well as the CoR are entitled, along with the Member States, to bring such complaints before the ECJ.

The Treaty of Lisbon is more attentive to a local dimension in its article 4(2) of the Treaty on European Union (TEU) providing that “the Union shall respect the equality of the Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, *inclusive of regional and local self-government*.”⁴² In addition, the subsidiarity principle, as reframed by the Treaty of Lisbon, is increasingly an important legal tool for subnational actors.⁴³ While previously the subsidiarity principle was limited to the Member States, the Treaty of Lisbon explicitly mentions regional and local levels of government in article 5(3) TEU where “the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central *or at regional and local level*.”⁴⁴

With Protocol No. 2 on the Application of the Subsidiarity Principle, the Treaty of Lisbon introduces an early monitoring system that empowers national parliaments to send the Commission a reasoned opinion on the compliance of legislative proposals with the subsidiarity principle.⁴⁵ Finally, the Protocol creates an ex-post control through a new form of judicial review by the European Court based on a subsidiarity action.⁴⁶

42. Consolidated Version of the Treaty on European Union art. 4(2), Sept. 5, 2008, 2008 O.J. (C 115) 47 [hereinafter TEU] (emphasis added).

43. In the current system, local and regional governments can bring subsidiarity claims before the ECJ to challenge Community acts that impinge upon a sphere of exclusive national power only if they are supported by the Member States. See N.W. Barber, *Subsidiarity in the Draft Constitution*, 11 EUR. PUB. L. 197 (2005); see also Case C-97/95, *Région Wallonne v. Comm'n*, 1997 E.C.R. I-1789 (limiting both standing and responsibility in regions); Case C-180/97, *Regione Toscana v. Comm'n*, 1997 E.C.R. I-5247 (same).

44. EC Treaty art. 5(3) (emphasis added).

45. See Paul Craig, *The Treaty of Lisbon, Process, Architecture and Substance*, 33 EUR. L. REV. 137, 150 (2008). The criteria to assess the infringement of subsidiarity by the Commission are described by the Protocol on the Application of the Principles of Subsidiarity and Proportionality that sets in place the compliance-monitoring system. Within eight weeks of when the Commission transmits to the national assemblies a legislative act, these criteria can give reasoned opinions for noncompliance with the principle of subsidiarity. For a detailed analysis of the Protocol, see Gavin Barrett, “*The King Is Dead, Long Live the King*”: *The Recasting by the Treaty of Lisbon of the Provisions of the Constitutional Treaty Concerning National Parliaments*, 33 EUR. L. REV. 66, 73 (2008).

46. See Protocol on the Application of the Principles of Subsidiarity and Proportionality, *supra* note 38, art. 8 (“The Court of Justice of the European Union shall have jurisdiction in actions on grounds of infringement of the principle of subsidiarity by a European legislative act, brought in accordance with the rules laid down in Article III-365 of the Constitution by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber of it. In accordance with the rules laid down in the said Article, the

Scholars have commented on these new checks on EU legislation as new safeguards of federalism, or as Robert Schütze put it, as a “soft constitutional solution” channeling the scrutiny of national parliaments.⁴⁷ In fact, the early monitoring system allows national parliaments to monitor whether the EU can better achieve a policy objective than the Member States or their subnational actors.⁴⁸ In drafting its bills, the Commission should adopt an objective “efficiency calculus” including both quantitative and qualitative indicators to demonstrate that the economic and social impact of its proposals creates an incentive to carry out the action at the EU rather than at the state or local level.⁴⁹ Then national parliaments, within a limited time, can raise a subsidiarity warning without any binding effects unless at least one-third of national parliaments raise subsidiarity warnings for a bill.⁵⁰

This early monitoring mechanism is a political safeguard that involves national parliaments in an ex-ante check on subsidiarity.⁵¹ Because of the high number of bills drafted by the Commission and the strict deadline for national assemblies, scholars have pointed out the little weight that national parliaments have in this process. In addition, there is a salient collective action problem in organizing the different national parliaments to achieve the quorum needed for a formal review of the bills.⁵²

As to the ex-post check on subsidiarity, the CoR will be able to challenge EU legislation when there is a subsidiarity breach before the ECJ.⁵³ In doing so, the CoR can defend its own consultative powers by challenging supranational institutions that did not take its advice into consideration.⁵⁴ Another element of this ex-post control on subsidiarity is

Committee of the Regions may also bring such actions against European legislative acts for the adoption of which the Constitution provides that it be consulted.”)

47. See Schütze, *supra* note 32, at 531; Brendan Flynn, *Reformed Subsidiarity in the Constitution for Europe: Can It Deliver Its Expectations?* (EIPA Working Paper No. 7/W/2005, 2005), available at <http://aei.pitt.edu/5916/>; Ian Cooper, *The Watchdogs of Subsidiarity: National Parliaments and the Logic of Arguing in the EU*, 44 J. COMMON MKT. STUD. 281 (2006).

48. See Protocol on the Application of the Principles of Subsidiarity and Proportionality, *supra* note 38, art. 5 (requiring the Commission to undertake a comparative efficiency calculus).

49. See Barrett, *supra* note 45, at 80 (discussing the difficulty to block legislation due to the high quorum requested by article 7(3), both in the Parliament and in the Council).

50. See Protocol on the Application of the Principles Subsidiarity and Proportionality, *supra* note 38, arts. 6-7.

51. See Bermann, *supra* note 34, at 458.

52. See *id.* at 458-59.

53. This new power for the CoR also creates an alternative forum to the national parliaments for local governments concerned with subsidiarity violations.

54. See Press Release, Committee of the Regions, European Court of Justice Judge Koen Lenaerts Calls on CoR and Legislative Regions To Prepare for Greater Powers Under the Lisbon

that any national parliamentary chamber is entitled to start an action before the ECJ. In the case of Germany this means that both chambers, the Bundestag, the assembly representing the people, and the Bundesrat, the council representing the *Länder*, could “independently lodge an action for annulment.”⁵⁵ Commentators have speculated on the interpretation of the subsidiarity principle, especially in a transatlantic conversation as influenced by the U.S. experience, scholars have called it a “presumption against pre-emption.”⁵⁶ A new floodgate of litigation, however, using the new judicial avenue to police subsidiarity violations before the Luxembourg courts is unlikely due to what seems a fairly clear allocation of powers between the EU and its Member States in the post-Lisbon architecture.

These new subsidiarity procedures have sparked new hopes about decentralization and “input legitimacy” by subnational actors in the EU democratic architecture. The mechanisms just described are geared to make the subsidiarity principle more effective. Nevertheless, these checks and monitoring mechanisms only apply in the realm of shared competences between the Union and its Member States. Subsidiarity checks are excluded for those areas that fall into the exclusive competence of the EU, such as matters concerning custom unions, competition, and monetary policy. They will apply, however, to broad matters including common market, consumer protection, energy, cohesion, and environmental policy, and the proportionality analysis is most likely to remain at the core of the infringement claim.⁵⁷

2. Reforming the Committee of the Regions

During the mid-1980s, the project undertaken by the Delors Commission of achieving a single market for free movement of goods, services, capital, and workers created large democratic and social

Treaty (May 20, 2005), <http://www.cor.europa.eu/pages/PressTemplate.aspx?view=detail&id=19030f50-2166-49f7-ade6-2af05d451234>. As Professor Judge Koen Lenaerts, also a judge of the European Court of Justice put it:

This means that the Committee of the Regions, even if it remains a consultative body, will considerably gain in importance. The consultative right means that the legislative institutions will have to inform the CoR about the reasons why they did not follow a CoR proposal and, most importantly, the Committee of the Regions will have the right to ask to be re-consulted if an initial legislative proposal on which the CoR had given its opinion is substantially modified during the legislative process.

Id. (internal quotation marks omitted).

55. See Hans Jürgen Papier, *Europe's New Realism: The Treaty of Lisbon*, 4 EUR. CONST. L. REV. 421 (2008).

56. See Schütze, *supra* note 32, at 533; Young, *supra* note 6.

57. See PAUL CRAIG & GRÁINNE DE BÚRCA, *EU LAW* 100 (5th ed. 2011).

tensions. In this period, policy makers were more willing to acknowledge the “role of local groups in satisfying deeply felt needs for group identity and dignity.”⁵⁸ Decentralization advocates suggested that an increase in regional and local autonomy could offer a solution to cultural and territorial conflicts.⁵⁹ The shared belief was that subnational participation in EU decision-making processes would solve the longstanding democratic deficit by matching the concomitant accountability of supranational institutions in Brussels. The shift towards regionalization was simultaneous with the expansion of EU competences beyond merely economic matters.⁶⁰ The creation of a European identity “united in diversity” was based on the affirmation of local diversities sharing a similar cultural and political identity.⁶¹

The creation of the CoR aimed to give voice to local actors through their democratic representation in Brussels.⁶² Its creation in the early 1990s was a landmark event, representing Europe’s commitment to, and recognition of, subnational interests. The CoR, an organic institution representing a plethora of different subnational actors in their demands for local autonomy,⁶³ was Brussels’ response to local resistance in enforcing EC directives. The CoR was one of the many responses to the democratic deficit in the EU.⁶⁴ Decentralization advocates believed that increasing the mandatory consultation of the CoR would strengthen the role of subnational actors, especially in areas such as EU cohesion policy, while legitimizing supranational processes.⁶⁵ Some expected the CoR to

58. *Id.*

59. Jordi Pujol, President of the Autonomous Community of Catalonia, stated that “regionalization is the answer to the need for citizens to express their identities within the European mosaic.” Naomi Roht-Arriaza, *The Committee of the Regions and the Role of Regional Governments in the European Union*, 20 HASTINGS INT’L & COMP. L. REV. 413, 418 (1996-1997) (internal quotation marks omitted).

60. See SOCIAL RIGHTS IN EUROPE (Gráinne de Búrca & Bruno de Witte eds., 2005).

61. “United in Diversity” was introduced in the Preamble of the Treaty of Maastricht and became the EU motto. See *United in Diversity*, *supra* note 2.

62. See *Committee of the Regions*, EUR. COMM’N, <http://www.cor.europa.eu/pages/HomeTemplate.aspx> (follow “Presentation” hyperlink; then follow “Role” hyperlink) (last visited Sept. 21, 2011) (providing a timeline for the CoR).

63. See Ford, *supra* note 10, at 862.

64. See Roht-Arriaza, *supra* note 59, at 446.

65. See *What Model for the Committee of the Regions? Past Experiences and Future Perspectives* (Eur. Univ. Inst. Working Paper EUF No. 95/2, Renaud Dehousse & Thomas Christiansen eds., 1995); ALEX WARLEIGH, *THE COMMITTEE OF THE REGIONS: INSTITUTIONALISING MULTI-LEVEL GOVERNANCE?* (1999).

mature into a full-fledged legislative chamber, alongside the European Parliament (EP) and the Council.⁶⁶

Supranational institutions such as the Commission and the EP were ambivalent advocates for regional cooperation and cohesion policy through the CoR. The Commission needs to consult with regional and local representatives to succeed in the implementation of its legislative bills as well as disbursement of EU funds. For this task, however, the Commission would have preferred to involve an adjunct advisory body on regional policy rather than another fully independent supranational institution.⁶⁷ Today the Commission is bound to consult the CoR in areas in which its legislative initiatives are directly relevant to the territories in question.⁶⁸

Likewise, the EP did not initially support a possible competitor insofar as the CoR Assembly, formed by elected subnational governments' officials, aimed to connect Brussels to local territories in a similar way to the EP.⁶⁹ The CoR Assembly was meant to be a forum in which subnational actors were entitled to express their views on the future impact of the policies elaborated in Brussels.⁷⁰

Despite the initial resistance of the Member States, they became the most important advocates of the creation of the CoR as an independent supranational institution.⁷¹ By controlling its membership, the Member States sought a way to advance their national interests through the CoR.⁷² Member States with strong subnational actors like the German *Länder* lobbied in favor of the creation of the CoR, in which local authorities could express their voice on EC decision-making processes.⁷³ The

66. See Thomas Christiansen & Pamela Lintner, *The Committee of the Regions After 10 Years: Lessons from the Past and Challenges of the Future* 1 EIPA (Dec. 2, 2004), http://www.eipa.eu/files/repository/eipascope/scop05_1_2.pdf.

67. See Tony Cole, *The Committee of the Regions and Subnational Representation to the European Union*, 12 MAASTRICHT J. EUR. & COMP. L. 49, 55 (2005).

68. *Id.* at 54-55; see also THE REGIONAL DIMENSION OF THE EUROPEAN UNION: TOWARDS A THIRD LEVEL EUROPE?, *supra* note 3.

69. See Resolution on the Intergovernmental Conference Decided on at the European Council in Madrid, Nov. 23, 1989, at 7, reprinted in RICHARD CORBETT, THE TREATY OF MAASTRICHT: FROM CONCEPTION TO RATIFICATION 104 (1993) (calling on Member States to “ensure that the construction of the European Union goes hand-in-hand with a strengthening of regional autonomy according to the principle of subsidiarity”).

70. See *European Commission Communication on Dialogue with Associations of Regional and Local Authorities on the Formulation of European Union Policy*, at 1, COM (2003) 811 final (Dec. 19, 2003) (laying down the framework, goals, and modalities governing this dialogue with associations of regional and local authorities).

71. See Cole, *supra* note 67, at 56.

72. *Id.*

73. *Id.*

composition of the CoR reflects the intense lobbying activity of the Member States.⁷⁴

Today the CoR has 344 members elected for four years from the representatives of regional and local bodies.⁷⁵ Each Member State is entitled to a certain number of representatives regardless of the type of decentralization existing at the domestic level.⁷⁶ Because of the large number of subnational representatives in each state, these representatives are selected by the national governments.⁷⁷ This selection is problematic because national authorities tend to choose those regional and local representatives that support the central government.⁷⁸

The CoR activities generally consist of consultation and issuing nonbinding opinions to the other supranational institutions. In some areas such as education (article 165(2) TFEU), culture (article 167(5) TFEU), and especially economic and social cohesion (article 178 TFEU), its advisory views are mandatory, when concerning matters in which the EU has not exclusive but shared competences with the Member States.⁷⁹ However, the Commission, the Council, and the EP are obliged to consult the CoR when taking action on specific social welfare matters.⁸⁰ The CoR opinions on the Commission's policy proposals are submitted either at its discretion or at the request of the Commission. The CoR publishes an "Impact Assessment Report" every six months stating the political

74. *Id.*

75. On the CoR membership, see TEC art. 3 (determining that the number of members allowed by each country is based on GDP, population, and their political weight).

76. *Id.*

77. *Id.*

78. As Cole puts it, "even though the treaty provisions covering the CoR explicitly guarantee the autonomy of the CoR Members, the selection process itself ensures that this is a goal unlikely to be met." See Cole, *supra* note 67, at 60 (explaining that because reelection after four years must be approved by the national governments, this limits the ability of the subnational representatives to speak freely against their states).

79. See DAMIAN CHALMERS & ADAM TOMKINS, EUROPEAN UNION PUBLIC LAW 90 (2d ed. 2011). This distinction between matters of local interest (police powers and social policy) versus matters of European interest (customs union and competition), which is strictly connected to the competences assigned by the Treaty to each sphere of power, has marked the nature of the CoR.

80. These matters include education and youth, culture, public health, trans-European cultural networks and economic and social cohesion. The mandatory consultation of the CoR is required before making a decision on the following matters (and their respective articles under the EC Treaty): education, vocational training and youth [article 149 (126)]; culture [article 151 (128)]; public health [article 152 (129)]; trans-European transport, telecommunications and energy networks [article 156 (129d)]; economic and social cohesion: specific actions [article 159 (130b)]; defining the tasks, priorities and organization of the Structural Funds [article 161 (130d)]; implementing decisions relating to the European Regional Development Fund [article 162 (130e)]. See *European Parliament Fact Sheets*, EUR. COMM'N, http://www.europarl.europa.eu/factsheets/1_3_12_en.htm (last visited Sept. 4, 2011).

achievements, the impact of its opinions, and the related activities to demonstrate the salience of its activities.⁸¹

Because of the large number of representatives, the formation of CoR opinions does not involve the entire Assembly in its plenary session.⁸² The Assembly only votes, through simple majority, for the adoption of the CoR opinions.⁸³ The opinions are elaborated and drafted by a very limited number of members that include the President and a Bureau of about sixty members elected every two-and-a-half years.⁸⁴ The Bureau constitutes the elite involved in drafting the CoR opinions.⁸⁵ While the discussion of the opinions takes place in the different committees created within the Bureau, only the Plenary Assembly votes on them.⁸⁶ As Tony Cole pointed out, this decision-making process undermines the possibility that the entire Assembly could have an influence on the CoR opinions.⁸⁷

Today the CoR is a well-respected consultative body among the other supranational institutions for its expertise on local matters and regional or cohesion policy. The Commission regularly involves and consults the CoR regarding regional interests in an attempt to better implement its policies as a sort of *ex ante* mechanism to check on the future implementation of its bills and development strategies. The CoR was proven to be a successful forum to share information about the implementation of EU legislation at the local level. Fruitful conversations with new Member States that had a previous familiarity with the CoR took place right before the European enlargement. After the EU enlargement with ten new Member States in 2004, the CoR successfully managed the tensions of the accession procedures by serving as a forum for discussions and cooperation between regional authorities of current Member States, as well as between those of newly joining Member States and the candidate countries.⁸⁸

81. See *CoR Impact Assessment Report 2004*, EUR. COMM'N (Apr. 12, 2005), http://www.cor.europa.eu/COR_cms/ui/ViewDocument.aspx?siteid=default&contentID=3583c3bc-4a08-449f-987e-06836ef01475.

82. Cole, *supra* note 67, at 63.

83. *Id.*

84. See *id.* For the functioning of the bureau, see *Presentation/Bureau*, EUR. COMM'N, <http://cor.europa.eu/pages/PresentationTemplate.aspx?view=folder&id=d0808c8c-0d54-4f66-8fc2-0eed601ddc78&sm=d0808c8c-0d54-4f66-8fc2-0eed601ddc78> (last visited Mar. 10, 2009).

85. *Presentation/Bureau*, *supra* note 84.

86. *Id.*

87. See Cole, *supra* note 67, at 67.

88. Christiansen & Lintner, *supra* note 66, at 5; see also Breffini O'Rourke, *Europe: Preserving Cultural Identity with Globalization*, RADIO FREE EUR. (Mar. 13, 2002), <http://ins.news.org/world/focus/0302/europe.intergration.culture.htm>. Today, with the new trend in EU foreign policy, the accession of new Member States is unlikely to happen. Rather, the new

Critics, however, have pointed to the CoR's limited consultative role despite its broad power to deliver opinions on a large variety of topics.⁸⁹ Often the CoR's qualitative contribution to the EC decision-making process is likely to be shallow and unfocused, thus having little impact on other supranational institutions.⁹⁰ Despite the prosperous activity of the CoR in its initial years, this institution has since not played a crucial role in the EC decision-making process. For instance, because it has an advisory role with no enforcement power, one could argue the CoR ended up paying lip service to democratic concerns rather than having a substantive input in decision-making processes.

From the outset, the CoR had an "unclear founding purpose, with the Commission wanting on the ground expertise from within the Member States to implement regional policy, and the German Länder and some others [wanting] an institution with a genuinely representative function."⁹¹ As a consequence, representation of subnational authorities within the CoR is very diverse. The CoR's diverse membership includes representatives from multiple European local governments, including regions, provinces, and cities.⁹² Not surprisingly, the authors of the report considered territorial diversity one of the main reasons for discord and division.⁹³ Territorial diversity heightened deep cultural and economic cleavages that can have a detrimental effect on cohesion policy initiatives. The CoR opinion regarding the Commission's development often depends on the impact that such proposals will have on different territories. Such an impact tends to fracture the CoR constituencies between urban and rural areas, between northern and southern, and eastern and western territories.⁹⁴ New divisions have risen within the CoR that entail not only the classic geographic divisions just mentioned,

Neighborhood Policy, converging both cooperation and security matters between the EU and the countries on its eastern borders, creates a new scenario for the CoR in its cooperation activities. See Steven Blockmans & Adam Łazowski, *The European Union and Its Neighbours: Questioning Identity and Relationships*, in *THE EUROPEAN UNION AND ITS NEIGHBOURS: A LEGAL APPRAISAL OF THE EU'S POLICIES OF STABILISATION, PARTNERSHIP AND INTEGRATION* 3, 7-8 (Steven Blockmans & Adam Łazowski eds., 2006); Tamara Takács, Book Review, 44 *COMMON MKT. L. REV.* 852-54 (2007).

89. See Roht-Arriaza, *supra* note 59, at 453.

90. See *id.* at 453-54.

91. See Charlie Jeffery, *Regions and the European Union: Letting Them in, and Leaving Them Alone*, in *THE ROLE OF REGIONS AND SUB-NATIONAL ACTORS IN EUROPE* 33, 36 (Stephen Weatherill & Ulf Bernitz eds., 2005).

92. *Id.*

93. See Peter van der Knaap, *The Committee of the Regions: The Outset of a 'Europe of Regions'*, 4 *REGIONAL FED. STUD.* 86 (1994).

94. *Id.* (explaining how Northern regions have been perceiving too much clientelism in the Southern style of local politics).

but also local competitiveness between cities and regions over European resources and opposing local goals with regards to the implementation of EU directives. In other words, rather than bridging political and geographical rifts, the CoR has heightened territorial tensions.⁹⁵

After 2004, the date of the major EU enlargement towards the east with the accession of ten new Member States, the CoR membership expanded from 222 to 317 members. At this point, another tension pervaded the CoR, triggered by the socioeconomic diversity as well as the different approach to decentralization in former Communist republics. Some feared that the new members might have different political views and a territorial agenda that could upset the balance reached in the CoR.⁹⁶ Overall, the inherent composition of the CoR itself created national divisions or transnational sub-divisions based on territorial as well as political party lines.⁹⁷ As a result, these emerging cleavages have prevented the CoR “from developing the kind of consensualism that was initially expected from it, given the discourse of a ‘Europe of the Regions.’”⁹⁸

A report reflecting on the successes and shortcomings of the CoR ten years after its creation asked whether the original expectations for the CoR had been satisfied.⁹⁹ The report suggested that the CoR sought to become a legislative chamber alongside the European Parliament.¹⁰⁰ The authors revealed some of the factors that they believed may have prevented the CoR from reaching its full potential.¹⁰¹ These included the unclear and vague goals set up for the CoR, as well as the diverse membership and ultimately the territorial diversity among its members.¹⁰² Proposals to reform the CoR in the Constitutional Treaty have varied from organizing subnational entities along local party lines to creating a double chamber (one for the regions and the other for the cities) to changing the system of selection of representatives, which is largely

95. See John Loughlin & Daniel-L. Seiler, *Le Comité des Régions et la supranationalité en Europe*, 30 *REVUE ÉTUDES INTERNATIONALES* 763, 774 (1999).

96. However, this factor appeared unfounded according to a study of the post-enlargement effects on localities in which the CoR suggested that the sudden increase of new members did not significantly alter the operation of the CoR. See John A. Scherpereel, *Absorbing the Shock: Enlargement’s Effects on the Committee of the Region 23* (Mar. 2005) (unpublished manuscript), <http://aei.pitt.edu/3303/> (last visited Sept. 30, 2011).

97. See Van der Knaap, *supra* note 93.

98. *Id.*

99. Christiansen & Lintner, *supra* note 66, at 7.

100. *Id.* 10.

101. *Id.* at 7-8.

102. *Id.* at 8.

based on national quotas based on the population of the Member States.¹⁰³

Finally, the CoR reflects the understanding of a “third level Europe” because subnational interests are depicted coherently and organically aiming at similar local autonomy goals. The way the CoR is structured presupposes homogeneity among local actors and a communality of interests that should be effectively represented in its Assembly.¹⁰⁴ These win-win situations are exemplary of an institution committed to enlisting localities to subscribe to the goals of the EU while providing a participation platform for local governments. The CoR promotes an organic understanding of what is “local” so that Brussels can emphasize and define local identities for its regions, cities, and provinces in order to adopt coherent and decontextualized cohesion policies based on the notion of local autonomy and a “third level Europe.”¹⁰⁵

B. *Scholarly Approaches to Local Autonomy in the EU*

1. More Visibility to Local and Regional Actors in the EU

Scholars who have criticized the EU because it is pervaded by a regional blindness more or less have implicitly promoted a unity vision. They contend that the current constitutional arrangement of the EU does not take into account the internal systems of decentralization of power within each Member State.¹⁰⁶ They propose reforming the CoR to provide better local participation and ameliorating subsidiarity procedures for local governments.¹⁰⁷ Professor Stephen Weatherill describes regional blindness as a pervasive disease spreading through Europe that reveals itself by challenging the current patterns of EU law.¹⁰⁸ Thus, regional blindness critics protest against the limited power that

103. See Jeffery, *supra* note 91, at 44-45.

104. See Rosarie E. McCarthy, *The Committee of the Regions: An Advisory Body's Tortuous Path to Influence*, 4 J. EUR. PUB. POL'Y 439 (1997) (noting that a deep crisis pervaded the CoR all through the late 1990s).

105. In doing so, Brussels is ignoring how the different political powers of the German *Länder*, the Italian regions and the Greek prefectures or cities are shaped by the different internal constitutional regimes as well as by the intranational power differences affecting local actors. For a study on the relation between the center and the peripheries in Europe, see STEIN ROKKAN & DEREK W. URWIN, *ECONOMY, TERRITORY, IDENTITY: POLITICS OF WEST EUROPEAN PERIPHERIES* (1983); *PROTECTING THE PERIPHERY: ENVIRONMENTAL POLICY IN PERIPHERAL REGIONS OF THE EUROPEAN UNION* (Susan Bauer et al. eds., 1994).

106. See Stephen Weatherill, *The Challenge of the Regional Dimension in the European Union*, in *THE ROLE OF REGIONS AND SUB-NATIONAL ACTORS IN EUROPE* 1, 7-8 (Steven Weatherill & Ulf Bernitz eds., 2005).

107. *Id.* at 7-8.

108. *Id.* at 5.

localities have in the EU and argue that the subsidiarity principle is inadequate to offer a real cure to the lack of decentralization.¹⁰⁹ According to these scholars, a broader institutional reform project at the Union level should give subnational entities more power in two respects. On the one hand, Weatherill suggests strengthening input legitimacy through a more “direct access to the EC law-making process,” while on the other he proposes a greater possibility to challenge the validity of acts before European courts.¹¹⁰

This twofold strategy is a remedy to what critics of regional blindness see as a paradox of European integration, whereby the law is made with little participation by subnational actors while local governments are crucial actors in implementing EU directives. Even if local governments refuse to implement directives, Member States bear the responsibility before the Commission and ultimately before the Luxembourg courts. Thus, Member States are trapped between their internal devolution arrangements and their supranational commitments to the EU, while subnational actors have little autonomy in the European architecture.¹¹¹

In undermining the internal distribution and the supranational allocation of powers that each Member State carefully carved through its national history, Weatherill warns that the EU empowers national executives at the expense of subnational authorities.¹¹² According to Weatherill, soft modes of governance are only a short-term cure to regional blindness.¹¹³ A better long-term cure to regional blindness is one

109. See Jeffery, *supra* note 91.

110. See Weatherill, *supra* note 106, at 5.

111. A revealing example is the German firefighters case that Weatherill brings as his first example in which some German *Länders* do not want to implement the harmonizing directive and the German government has to respond to the Commission about it. Case C-103/01, Comm'n v. Germany, 2003 E.C.R. I-5372; see also Eiko Thielemann, *Institutional Limits of a 'Europe with the Regions': EC State-Aid Control Meets German Federalism*, 6 J. EUR. PUB. POL'Y 399 (1999).

112. See Weatherill, *supra* note 106, at 7-8 (“This is the price that the EC pays for its regional-blindness. . . . Its formal lack of regard for domestic constitutional arrangements may be combined with activity that in practice severely disturbs those internal patterns. State responsibility mediated through the EC legal order may encourage trends towards centralisation; or at least the demands imposed on the State by EC law may impede otherwise significant trends towards decentralisation.”).

113. *Id.* at 9. This short-term solution has some drawbacks. In fact, soft modes of governance could “store up trouble for the future when there will eventually arrive a reckoning of the tensions generated by the spread of non-binding activity into potentially constitutionally unauthorised areas.” *Id.* Weatherill points out that in the case of Spain, the open method of coordination was adopted to sidestep the shortcomings of education policy rather than promote a radical change. *Id.*

that promotes decentralization through political paths to greater representation of subnational actors at the EU level.¹¹⁴

Critics of regional blindness are committed to reinforcing a common local identity through which subnational actors can express themselves and maintain their own distinctiveness at the EU level. In conveying local governments' representatives such as mayors and prefects to Brussels, this is per se a transformative process. For local leaders, "going to Brussels" is synonymous of their becoming more European, thus strengthening the EU identity in addition to their local one.¹¹⁵

Recently, some scholars have advocated in favor of increasing the standing of regions, particularly in the context of cohesion policy where the European courts, in striking contrast with other cases in the realm of state aids, have denied standing to regional actors for the annulment of EU acts.¹¹⁶ Despite the efforts of the Treaty of Lisbon to give greater access to regional actors, under article 263 TFEU regional actors are not privileged applicants in challenging the lawfulness of EU acts.¹¹⁷ In response, Koen Leenerts and Nathan Cambien have explained that even if the limited standing for the regions remains an obstacle, what is

114. To regional blindness critics, the recognition of differences and the focus on decentralization can be achieved through supranational legislative and adjudicatory bodies. Thus, some success stories are possible. According to these scholars, the Åland Islands in Finland have preserved their local autonomy, not without tensions, but through an alignment of local, national, and supranational politics promoting decentralization. *Id.* at 9. However, in the post-Treaty of Lisbon scenario, things have dramatically changed since the Åland Island government refused to ratify the Treaty, thus creating major diplomatic problems in the negotiations between Finland and the EU. See Siobhán Dowling, *Tiny Åland Islands Threaten To Reject Lisbon Treaty*, SPIEGEL (Mar. 13, 2008), <http://www.spiegel.de/international/Europe/0,1518,541281,00.html>. Weatherill contrasted these success stories with situations in which the political alignment is much harder to reach, and in cases where decentralization involves a large number of regions or it strengthens deep cultural and socioeconomic dimensions, such as in Spain. Weatherill, *supra* note 106, at 9.

115. See Peter-Christian Müller-Graff, *The German Länder: Involvement in EC/EU Law and Policy Making*, in *THE ROLE OF REGIONS AND SUB-NATIONAL ACTORS IN EUROPE* 103, 113-17 (Stephen Weatherill & Ulf Bernitz eds., 2005). Critics of regional blindness rely on the national-local structure as embodied in national law rather than envisaging new possibilities for local power in the EU. Thus the EU has what U.S. local government scholars call a "*Hunter v. City of Pittsburgh* problem": efforts to protect national power (in the name of decentralization) suggest that the nation-states should have power to structure sub-national government in their own way. See *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907); FRUG & BARRON, *supra* note 5.

116. For structural funds, see Case T-60/03, *Regione Siciliana v. Comm'n*, 2005 E.C.R. II-4142; Case C-15/06 P, *Regione Siciliana v. Comm'n*, 2007 E.C.R. I-2594; Case T-189/02, *Ville Vesuviane v. Comm'n*, 2007 E.C.R. II-89; Joined Cases C-445/07P and C-455/07P, *Comm'n v. Ville Vesuviane*, 2009 E.C.R. I-7993. For cohesion funds, see Case T-324/06R, *Município de Gondomar v. Comm'n*, 2007 E.C.R. II-55; Case T-13/08, *Koinotita Grammatikou v. Comm'n*, 2008 E.C.R. II-211.

117. See TFEU art. 263 (giving only quasi-privileged standing to the CoR when defending its own prerogatives).

remarkable is the trajectory of a European jurisprudence much more attuned to regional autonomy and sensitive to the internal allocation of power.¹¹⁸ In addressing cohesion policy, Anne Thies has clarified the exceptional approach adopted by the courts vis-à-vis cohesion policy, thereby denying standing to the regions for lack of direct concern.¹¹⁹ This is because in challenging a Commission's decision that stops the disbursement of EU funding, the regions will always attempt to maintain their economic privileges as the beneficiaries of the funds before the courts.¹²⁰ From a more contextual and economic development perspective concerned with the Southern Italian periphery, Daniela Caruso advocates giving standing as privileged applicants to the regions in order to engage the Luxembourg courts more substantively in key development decisions, too often left to politics rather than law.¹²¹ If these lawyers advocate to improve the representation of regional interests before the EU courts because this entails important promises for input legitimacy in Europe, others have elaborated a new governance paradigm focusing on policy rather than law to better involve local actors in EU regulatory strategies.

2. New Governance Advocates

There are several historical and intellectual factors that can explain this shift in vision. Because the possibility of regulating social Europe is restrained by political, budgetary, and jurisdictional limits, the Commission began addressing social policies through soft regulatory tools.¹²² A vision of decentralization, aiming at transforming local jurisdictional lines for pragmatic and instrumental policy outcomes, goes hand in hand with the new governance shift in the Commission's regulatory practices.¹²³ At the same time, theories of multilevel governance and deliberative democracy obtained increasing success among politicians, technocrats, and lawyers. In the late 1990s, the growing consensus among scholars and politicians was that the process

118. See Koen Lenaerts & Nathan Cambien, *Regions and the European Courts: Giving Shape to the Regional Dimension of Member States*, 35 EUR. L. REV. 609, 634 (2010).

119. Anne Thies, *The Locus Standi of the Regions Before EU Courts*, in *THE ROLE OF THE REGIONS IN EU GOVERNANCE* 25, 30-34 (Carlos Panara & Alexander DeBecker eds., 2011).

120. *Id.*

121. See Daniela Caruso, *Direct Concern in Regional Policy: The European Court of Justice and the Southern Question*, (Boston Univ. Sch. of Law Working Paper No. 10-41, 2010), available at http://papers.ssrn.com/sOL3/papers.cfm?abstract_id=1710203.

122. See JEAN-CLAUDE BARBIER, *LA LONGUE MARCHÉ VERS L'EUROPE SOCIALE* (2008).

123. See Gráinne de Búrca & Joanne Scott, *Introduction: New Governance Law and Constitutionalism*, in *LAW AND NEW GOVERNANCE IN THE EU AND THE US* 1, 2 (Gráinne de Búrca & Joanne Scott eds., 2006).

of creating international law had become a “multilayered process” that implicitly involved supranational and subnational institutions.¹²⁴ Gary Marks defined multilevel governance as “a system of continuous negotiation among nested governments at several territorial tiers—supranational, national, regional, and local.”¹²⁵ Multilevel governance influenced lawyers' thinking about decentralization insofar that the focus on regionalism and localism could justify and give new legitimacy to a postnational Europe.¹²⁶

At the same time, Jürgen Habermas, in his plea for a European Constitution, recognized the democratic potential for decentralization through a more substantive role for subnational institutions.¹²⁷ Deliberative models of democracy would bring, according to the Habermasian Theory, new legitimacy to representative models.¹²⁸ Deliberative democratic processes sought to better involve local actors, civil society, and different stakeholders in consultation processes for the formation of EU policies. In taking these alternative approaches to representative democracy seriously through greater participation and deliberative processes, the aim of the Commission was to bring Brussels closer to its citizens.¹²⁹ At this point the combination of multilevel governance and deliberative democracy became the intellectual foundations of the community vision.

These intellectual projects played an important role in influencing EU law in the late 1990s through new governance regulatory tools that pervaded the Commission's agenda. European politicians, technocrats, and lawyers began to more explicitly link social policy objectives to multilevel governance, and deliberative democracy to new governance

124. See Gary Marks, *Structural Policy and Multilevel Governance in the EC*, in 2 THE STATE OF THE EUROPEAN COMMUNITY: THE MAASTRICHT DEBATES AND BEYOND 391 (Alan W. Cafruny & Glenda G. Rosenthal eds., 1993).

125. See *id.* at 392.

126. See Christian Joerges & Jürgen Neyer, *From Intergovernmental Bargaining to Deliberative Political Processes: The Constitutionalisation of Comitology*, 3 EUR. L.J. 273, 293 (1997); Christian Joerges, *'Deliberative Political Processes' Revisited: What Have We Learnt About the Legitimacy of Supranational Decision-Making*, 44 J. COMMON MKT. STUD. 779, 790 (2006).

127. See Jürgen Habermas, *Why Europe Needs a Constitution*, 11 NEW LEFT REV. 5, 11 (2001).

128. *Id.*

129. See Roberto Caranta, *Introduction: The Future of Participation*, in INTEREST REPRESENTATION IN ADMINISTRATIVE PROCEEDINGS 6 (Roberto Caranta ed., 2008) (“In democracy dimensions matter. The dimensions of nation states made direct democracy impracticable. The dimension of—and diversity of the States and peoples composing—the European Union make representative democracy problematic.”).

tools.¹³⁰ In contrast to the classic “community method” deployed in EU decision-making processes, the Commission used alternative legal tools addressing governance rather than law.¹³¹ Among these new tools, predominantly addressing soft law rather than hard law, two regulatory mechanisms emerged for the purpose of local governance: the open method of coordination (OMC) and the tripartite agreements (TAs). Both tools represented a similar shift in vision of decentralization from unity to community. Rather than relying on the existing local jurisdictions, new governance lawyers designed new transnational networks of governance not limited by national boundaries.

New governance advocates provided a new regulatory framework for EU policy to respond to the challenges of global governance.¹³² The lawyers conceptualizing the current changes in EU regulatory trends have adopted a comparative approach to U.S. federal experimentalist regulation.¹³³ New governance advocates have shown how bottom-up and soft law approaches are an effective response to the failures of command-and-control regulation in the EU.¹³⁴ Since 2000, the Commission has

130. See Christian Joerges, *Integration Through De-Legislation?*, 33 EUR. L. REV. 291, 292 (2008). This article argues that the change in governance has been only an apparent one due to the tremendous success of the open method of coordination, whereas in the 1980s there were already other regulatory instruments dealing with “the failures of interventionist conceptions of law and the search of methodologies, such as ‘proceduralisation’ and ‘reflexive law’, which could then cope with new post-interventionist practices.” *Id.*

131. See Joanne Scott & David M. Trubek, *Mind the Gap: Law and New Approaches to Governance in the European Union*, 8 EUR. L.J. 1 (2002).

132. These challenges are the increasing transnational character of legal regulation, the shrinking of the state as a central regulatory actor and the ideological shift towards private lawmaking and ultimately the departure from classic command-and-control approaches to regulatory schemes. See Gráinne de Búrca & Joanne Scott, *Introduction*, 13 COLUM. J. EUR. L. 513, 513-14 (2007).

133. See Michael C. Dorf & Charles F. Sabel, *A Constitution of Democratic Experimentalism*, 98 COLUM. L. REV. 267 (1998); De Búrca & Scott, *supra* note 123, at 2; *The New Federalism: Plural Governance in a Decentered World*, 57 EMORY L.J. 1 (2007) (the 2007 Randolph W. Throver Symposium).

134. See HARM SCHEPEL, *THE CONSTITUTION OF PRIVATE GOVERNANCE: PRODUCT STANDARDS IN THE REGULATION OF INTEGRATING MARKETS* (2005). Since 2000, the Lisbon agenda aimed to make the EU “the most dynamic and competitive knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion, and respect for the environment by 2010.” NICOLA FONTAINE, LISBON EUROPEAN COUNCIL 23 AND 24 MARCH 2000: PRESIDENCY CONCLUSION (Mar. 23-24, 2000), *available at* http://www.europarl.europa.eu/summits/lis1_en.htm. The Lisbon strategy was developed by the European Council in 2000 to address unemployment and other EU social policies by strengthening the connection between Brussels and subnational actors. Cities and regions became, according to the Lisbon strategy, “key actors in the area of innovation, research and education policies; they deliver more than 66% of all public investment in the EU; they are increasingly focusing the Structural Funds expenditure on growth and jobs goals.” Resolution of the Committee of the Regions To Be Submitted to the European Spring Council 2008 on “The Strategy for Growth and Jobs—Handling the ‘Lisbon Paradox,’” 25 Apr. 2008, 2008 O.J. (C 105)

widely used the OMC as a platform for its alternative regulatory practices in social policy.¹³⁵ Instead of using binding regulations or more flexible directives, the Commission adopted nonbinding guidelines that are periodically monitored and reviewed. New governance tools are nonhierarchical, decentralized, flexible, informal, and self-reflective. Social security, employment strategies, and more recently immigration policies are the areas in which new governance advocates have focused on the “accommodation and promotion of diversity, on the importance of provisionality and revisability—in terms of both problem definition and anticipated solutions—and on the goal of policy learning.”¹³⁶

The success of new governance in the EU architecture derives in part from a simple formula summarized by Chuck Sabel and Jonathan Zeitlin.¹³⁷ New governance procedures start by setting common goals at the center—by Brussels and the Member States and then leaving freedom at the periphery—for local governments and other nongovernmental stakeholders. While connecting the various actors through monitoring and reporting information, the common goals are continuously readjusted to the expectation of the actors involved in the process. In particular, new governance offers a buffer to the legitimacy crisis and the democratic deficit pervading supranational institutions. According to its advocates, new governance creates less controversial and more flexible regulatory approaches to areas such as social policy where the EU maintains a weak competence to intervene.¹³⁸

The Commission enlisted subnational actors in its quest for greater participation, transparency, and effectiveness of its policies. The OMC is an emblematic type of policy initiative that creates a network among civil

31 (EU) (“[W]elcoming that one of the key changes of the revised Lisbon Strategy adopted in 2005 is the concept of ‘going local’, aimed at stressing the role of the local and regional levels.”). In 2007, with the adoption of the Leipzig Charter on Sustainable European Cities (2007), the European Council aimed to renew its municipal cooperation programs connecting Brussels directly to its cities or through the activities of the CoR. For instance, the slogan “Europe is ‘going local’” was launched by the High Level Group. REPORT FROM THE HIGH LEVEL GROUP CHAIRED BY WIM KOK, FACING THE CHALLENGE: THE LISBON STRATEGY FOR GROWTH AND EMPLOYMENT 7 (Nov. 2004), available at http://ec.europa.eu/growthandjobs/pdf/kok_report_en.pdf; see also Leipzig Charter on Sustainable European Cities (EC), *supra* note 23.

135. The OMC is open to different forms, like a cookbook “of recipes, with variants on a theme, rather than a single recipe.” See PAUL CRAIG & GRÁINNE DE BÚRCA, *EU LAW: TEXT, CASES AND MATERIALS* 153 (4th ed. 2008).

136. See De Búrca & Scott, *supra* note 123, at 3.

137. See Charles F. Sabel & Jonathan Zeitlin, *Learning from Difference: The New Architecture of Experimentalist Governance in the EU*, 14 *EUR L.J.* 271 (2008). Other institutional reasons for the success of new governance have been analyzed in vast and complex literature. See CRAIG & DE BÚRCA, *supra* note 135, at 144.

138. See Scott & Trubek, *supra* note 131, at 6.

society and local stakeholders in the creation of national action plans presented to the Commission. In addressing governance rather than legislation, soft rather than hard law, participation rather than representation, the OMC connects local stakeholders to Brussels through new transnational networks in which the state is no longer the main interlocutor to the EU, but rather one player among many.¹³⁹

In its White Paper on European Governance, the Commission advocated in favor of five principles as the basis of good and democratic governance: openness, participation, accountability, effectiveness, and coherence.¹⁴⁰ To encourage subnational actors to participate in the Commission's activities, the White Paper envisaged both a direct engagement of local authorities¹⁴¹ and a less direct avenue of engagement through the CoR.¹⁴² In this way, the Commission aimed to establish an alternative set of tools to the classic community method by adding to command-and-control regulatory approaches more experimental instruments such as benchmarking, stakeholder participation, and monitoring mechanisms.¹⁴³

The most successful new governance initiative was the OMC, through which subnational units as well as civil society and private stakeholders would be called upon to offer feedback, produce

139. See David M. Trubek & Louise G. Trubek, *New Governance and Legal Regulation: Complementarity, Rivalry or Transformation*, 13 COLUM. J. EUR. L. 539, 555-56 (2007).

140. One of the various goals of the White Paper was to explore new democratic forms of governance, mainly participatory and deliberative democracy, to better involve the European, national and the regional levels. *Commission White Paper on European Governance*, at 3-4 COM (2001) 428 final (July 25, 2001), available at http://europa.eu.int/int/eurlex/en/com/cnc/2001/com2001_0428en01.pdf [hereinafter White Paper]. In particular, the White Paper endorsed better involvement and more openness; instituting openness through all stages of decision making; ensuring consultation with regional and local governments and with civil society networks. *Id.*

141. The Commission attempted to involve local and peripheral institutions together with civil society and stakeholders in a closer conversation and coordination with the activities of the center. See Margherita Poto, *Participatory Rights in the Independent Administrative Authority System*, in INTEREST REPRESENTATION IN ADMINISTRATIVE PROCEEDINGS, *supra* note 129, at 147.

142. The White Paper encouraged the CoR to develop proposals, reports and policy advice on Community actions. White Paper, *supra* note 140, at 13-14. In the White Paper the Commission appeared to champion the role of the CoR in regional matters:

At EU level, the Commission should ensure that regional and local knowledge and conditions are taken into account when developing policy proposals. *For this purpose, it should organise a systematic dialogue with European and national associations of regional and local government, while respecting national constitutional and administrative arrangements.* The Commission welcomes on-going efforts to increase co-operation between those associations and the Committee of the Regions.

Id. (emphasis added).

143. As Joanne Scott and David Trubek have shown, this trend towards new forms of governance and a greater use of soft law mechanisms has marked a new approach towards regulatory practices. See Scott & Trubek, *supra* note 131.

knowledge, and create monitoring mechanisms in social policy areas.¹⁴⁴ The community vision influenced this form of concerted decentralization, allowing Brussels to set goals and enabling national and local experimentation. Through OMC networks a plethora of private and public actors can exchange information for policy goals. However, concerns arose regarding mechanisms for selecting local and civil society stakeholders to participate in these deliberative networks because the informality of the selection process might create distortions and unfairness in participation.¹⁴⁵

Despite the commitment of new governance advocates to decentralization, the participation of local governments in the OMC has been a limited one. As Joanne Scott noticed, the OMC lacked a regional dimension to its process.¹⁴⁶ While the White Paper called for more direct contact with the regions, the Commission only envisaged coordination with national governments or with the CoR as an optional source of consultation on subnational matters.¹⁴⁷ In this respect, subnational actors also expressed their concern about retaining their social welfare competences vis-à-vis the expansion of the OMC.¹⁴⁸ Several *Länder* complained that despite its soft law and noncompulsory regulatory mechanism, the OMC encroached upon education, health, and other

144. One example is the European Employment Strategy, in which the OMC has turned out to create a successful policy network in the fight against unemployment. According to what the Trubeks call a “decentralised consideration” perspective, “the EU’s role would be to establish broad objectives, and then facilitate policy reform and experimentation at the local level.” A decentralized concertation approach by the Commission opens up a place for participation of local governments in European governance. In contrast to a “euro-corporatist vision” in which welfare politics should involve centralized negotiation between the central governments and Brussels, a decentralized approach emphasizes the importance of local experimentation and a values-diverse approach to poverty reduction, unemployment policies and pension reforms. For a more optimistic approach, see David Trubek & Louise G. Trubek, *Hard and Soft Law in the Construction of Social Europe: The Role of the Open Method of Co-Operation*, 11 EUR. L.J. 343, 345, 352, 354, 363 (2005). For a more critical approach based on practical outcomes, see Kenneth A. Armstrong, *The ‘Europeanisation’ of Social Exclusion: British Adaptation to EU Co-Ordination*, 8 BRIT. J. POL. INT’L REL. 79 (2006).

145. For an insightful critique linking negotiation and new governance, see Amy J. Cohen, *Negotiation, Meet New Governance: Interest, Skills, and Selves*, 33 L. SOC. INQUIRY 503 (2008).

146. See Andrew Scott, *The (Missing) Regional Dimension to the Lisbon Strategy*, 27 SCOTLAND EUROPA PAPERS 1 (2005).

147. Christiansen & Lintner, *supra* note 66, at 3.

148. With the streamlining of the OMC and its inclusion in the new Treaty of Lisbon, this new governance tool is acquiring a constitutional status. After 2005, the Barroso Commission put greater emphasis on economic and employment coordination strategies at the expense of social protection/inclusion ones. See Kenneth Armstrong et al., *JCMS Symposium: EU Governance After Lisbon*, 46 J. COMMON MKT. STUD. 413, 418 (2008) (explaining that this created greater interdependence between constitutionalism and governance mechanisms that brought new potential as well limited radical change in the OMC process).

welfare policies in which the *Länder* maintained exclusive competences. Not surprisingly, in some cases, these new modes of governance rather than promoting a “third level Europe” disempowered local actors at the expense of European governance involving stakeholders rather than local citizens.¹⁴⁹

III. THE FALSE PROMISE OF LOCAL AUTONOMY IN DEVELOPMENT POLICY

The alliance between local governments and Brussels seems promising because it can undermine state control over local governments, thus creating local autonomy.¹⁵⁰ This cooperation, however, can be a threatening prospect for Member States because their authority over subnational actors is undermined. Rather than asking whether more local autonomy is better than less, this Article asks: What kinds of autonomy do local governments gain from federal-local cooperation? How do Member States react to regional cooperation with the EU? Did local governments gain new power or did they just substitute federal with state control?

EU regional or cohesion policies allocate funding to the peripheries or the poorest regions because of the wealth inequality created by market integration.¹⁵¹ These policies have provided room to create alliances between local and supranational actors in the EU as an exemplary model of multilevel governance.¹⁵² Commentators have argued, however, that cohesion policies have almost the opposite effect, namely “renationalization” or the empowerment of the Member States at the expense of local governments.¹⁵³ Thus, EU cohesion policies have a double effect.¹⁵⁴ On

149. See Ingeborg Tömmel, *Transformation of Governance: The European Commission's Strategy for Creating a "Europe of the Regions,"* 8 REGIONAL & FED. STUD. 52, 73 (1998) (“[T]he newly emerging patterns of decision-making and consensus building evolve independently of or even against formal distribution of powers between government levels.”).

150. This type of federal-local cooperation also takes place in the United States, where the federal government makes arrangements to distribute money or cooperate directly with local governments, thus undercutting the power of the states in their control over local decision-making. See Nestor M. Davidson, *Cooperative Localism: Federal-Local Collaboration in an Era of State Sovereignty*, 93 VA. L. REV. 959, 968-74 (2007) (explaining new forms of federal local cooperation in the aftermath of September 11 and Hurricane Katrina, and on fiscal federalism).

151. See Gary Marks, *Exploring and Explaining Variation in EU Cohesion Policy*, in COHESION POLICY AND EUROPEAN INTEGRATION: BUILDING MULTI-LEVEL GOVERNANCE 388, 391 (Liesbet Hooghe ed., 1996).

152. *Id.* at 389. In the United States, EU cohesion policy provided a source of inspiration to significant reform proposals in the context of local government law. See Gerald E. Frug, *Beyond Regional Government*, 115 HARV. L. REV. 1763, 1766 (2002).

153. See Jeffrey J. Anderson, *Skeptical Reflections on a Europe of Regions: Britain, Germany, and the ERDF*, 10 J. PUB. POL'Y 417, 417 (1990); Mark A. Pollack, *Regional Actors in*

the one hand, local governments have sought a way to constitute transnational alliances with Brussels against their Member States.¹⁵⁵ On the other hand, some Member States maintained control of their subnational entities by becoming the main intermediaries between Brussels and the regions in the allocation of European resources.¹⁵⁶

Thus, this “shared administration” between the EU and the regions in the disbursement of EU funds had created a tremendous possibility for empowering local governments by undercutting state control over local decision making.¹⁵⁷ Nevertheless, EU policies did not create new legal power for local governments against state control.¹⁵⁸ On the contrary, in some cases the EU empowerment of localities has produced the opposite outcome; that is, strengthening Member States or EU control over local decision making.¹⁵⁹ Subpart A sheds light on the main problems as well as the reform proposals about disbursing EU funds to the regions. Subpart B shows that the effects of EU cohesion policies in different Member States are highly disparate, path-dependent on the local administrative models, and ultimately influenced by diverse economic geographic factors. In fact, cohesion policy can succeed at times, thus achieving its local economic development goals, while at others it fails because rather than achieving the desired economic development objective on a particular territory, it reinforces state control over localities, or it substitutes EU for state control.

an Intergovernmental Play: The Making and Implementation of EC Structural Policy, in THE STATE OF THE EUROPEAN UNION: BUILDING A EUROPEAN POLITY? 361, 362 (Carolyn Rhodes & Sonia Mazey eds., 1995).

154. This double effect has created a large controversy among scholars seeking to address who really governs EU cohesion policy and what the real contribution of local actors is in deciding the allocation of the structural funds. For an excellent reconstruction of the debate, see John Bachtler & Carlos Mendez, *Who Governs EU Cohesion Policy? Deconstructing the Reforms of the Structural Funds*, 45 J. COMMON MKT. STUD. 535 (2007).

155. See LIESBET HOOGE & GARY MARKS, MULTI-LEVEL GOVERNANCE AND EUROPEAN INTEGRATION 114 (2001) (“Regional and local actors have used partnership to challenge their national governments. British local authorities, for example, called on the Commission’s support in resisting Conservative government’s policy of centralization.”).

156. See Scott, *supra* note 19, at 625-52 (explaining the changing notion of “partnership” through which the Commission pushed the Member States to gain greater control and responsibility on the allocation of the structural funding); see also Andrew Moravcsik, *Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach*, 31 J. COMMON MKT. STUD. 473 (1993) (explaining the renationalization thesis).

157. See Paul P. Craig, *Shared Administration, Disbursement of Community Funds and the Regulatory State, in LEGAL CHALLENGES IN EU ADMINISTRATIVE LAW: TOWARDS AN INTEGRATED ADMINISTRATION* 34, 37 (H. Hofmann & A. Turk eds., 2009).

158. Frug, *supra* note 7, at 554; FRUG & BARRON, *supra* note 5, at 45.

159. See Pollack, *supra* note 153, at 362.

A. *Cohesion Policy To Reduce Wealth Disparities in the Peripheries*

Despite its uncertain future when the founding fathers established the Treaty of Rome (1957), in the 1970s cohesion policy became the major economic development tools that Brussels used in order to address the imbalances created by the common market and to reduce disparities among European regions.¹⁶⁰ Through its cohesion policy, the Union promotes economic growth in the poorer regions in Europe through the disbursement of EU funds.¹⁶¹ Despite its early start, cohesion policy encountered many institutional as well as ideological challenges until the mid-1980s when Jacques Delors, the former president of the European Commission, linked cohesion policy to the completion of the common market to more effectively involve local governments in cohesion policy.¹⁶²

1. The Disbursement of EU Funds

As early as 1988, the Community took seriously the goal of enlisting regional actors in the decision making and implementation of the cohesion policy through the cooperation or partnership between the Commission, the Member States, and their subnational governments.¹⁶³ At the time, two regulations defined the major objectives of cohesion policy and they established the procedures for the regions to gain access to structural funding through the intermediation of the Member States.¹⁶⁴

160. See FABRIZIO BARCA, AN AGENDA FOR A REFORMED COHESION POLICY: A PLACE-BASED APPROACH TO MEETING EUROPEAN UNION CHALLENGES AND EXPECTATIONS 13 (Apr. 27, 2009) [hereinafter BARCA REPORT], available at http://ec.europa.eu/regional_policy/policy/future/pdf/report_barca_v0306.pdf. Cohesion policy was initially created in the 1960s and in the mid-1970s, when the Community established a European Regional Development Fund in order to deal more directly with the regions. The early 1970s was the moment when “the plan [was] to deepen the internal market and to launch [the] Economic and Monetary Union and the expected adverse effects of this on regional disparities.” *Id.*

161. See Marks, *supra* note 151, at 391.

162. See Liesbet Hooghe, *Building a Europe with the Regions: The Changing Role of the European Commission*, in COHESION POLICY AND EUROPEAN INTEGRATION: BUILDING MULTI-LEVEL GOVERNANCE, *supra* note 151, at 89. In this respect, the Commission’s Directorate General for Regional Policy became the most important actor managing structural funds, including regional funds as well as agricultural and social funds. *Id.*

163. See PAUL CRAIG, EU ADMINISTRATIVE LAW 73 (2006). The partnership phase takes place during the operational programs that occur in a third phase of cohesion policy after the preparation of regional plans by the states and the creation of a support framework by the Commission. During the operational program, the partnership principle plays an important role because decisions regarding which project to finance are made not at one level at the expense of the other, but within a framework of multilevel (and multiactor) governance, based upon sharing responsibility. Scott, *supra* note 19, at 634.

164. See Council Regulation 2052/88, On the Tasks of the Structural Funds and Their Effectiveness and on Coordination of Their Activities Between Themselves and with the

These EU regulations left much discretion to the states in devolving powers to their local governments accessing structural funds.¹⁶⁵ The shortcomings of these commitments, however, became evident when regions had very limited discretion over the decisions on the allocation of resources.¹⁶⁶

EU cohesion policy aims to create a “stable and harmonious growth” in the common market.¹⁶⁷ The main instrument lies in structural funds, which have a vast application in financing social and economic projects and include the European Regional Development Fund (ERDF), the European Social Fund (ESF), and the Agricultural Fund.¹⁶⁸ Although EU regulations setting the general guidelines for cohesion policy are adopted through unanimous voting by the Council of Ministers, in deciding on the allocation of the ERDF, the EU adopts the codecision procedure that fully involves the European Parliament and mandates the consultation of the CoR and the Economic and Social Council.¹⁶⁹ The four guiding principles in the allocation of the structural funds are: (1) concentration, whereby the funds would be concentrated in the regions of greater need; (2) additionality, whereby the funds are bringing

Operations of the European Investment Bank and the Other Existing Financial Instruments, 1988 O.J. (L 185) 9; Council Regulation 4253/88, Laying Down Provisions for Implementing Regulation 2052/88 art. 9, 1988 O.J. (L 374) 1.

165. See Council Regulation 1083/2006, art. 105, 2006 O.J. (L 210) 25 (describing the European Regional Development Fund).

166. See Caranta, *supra* note 129, at 8.

167. According to the EU Treaty of Amsterdam, the Community is committed to eliminating disparities and offering incentives to poorer economies to become more competitive in the market through various instruments addressing socioeconomic disparities among regions. See TFEU art. 174; EC Treaty art. 158 (“In order to promote its overall harmonious development, the Union shall develop and pursue its actions leading to the strengthening of its economic, social, and territorial cohesion. In particular, the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions.”).

168. See *Inforegio Factsheet 2006*, EUR. COMM’N, http://ec.europa.eu/regional_policy/sources/docoffic/official/regulation/pdf/publications/memo_en.pdf (last visited Sept. 21, 2011). There is also the cohesion fund, which targets infrastructure and other environmental projects but is not based on regional or local policies, and is redistributed among specific Member States. By contrast, the Structural Funds are targeting regions and, more consistently, subnational entities in addressing six different objectives that since 1993 have been broadening the EC development strategies, such as adaptation of workers to industrial change or economic adjustment of underdeveloped areas. The revision of the Objectives of the structural funds were modified in 1993. Council Regulation 2081/93, Amending Regulation 2052/88, art. 1, 1993 O.J. (L 193) 5 (establishing objectives as follows: (1) the promotion of the development and structural adjustment of the Regions; (2) the conversion of Regions seriously affected by industrial decline; (3) fighting against long-term unemployment; (4) facilitating the adaptation of workers to industrial change; and (5) creating a new Fund addressing problems related to Fisheries.).

169. See TFEU art. 307 (establishing decision procedure which requires consultation of the CoR).

additional money to areas where other forms of aid come from the Member States; (3) partnership, whereby the involvement of regional and local actors achieve a similar ends; and (4) programming, whereby the number of years for determinate projects is established.¹⁷⁰

The procedure to allocate funds to particular regions begins with a consultation by the Member States with their subnational partners in order to present to the Commission their regional development plans. After reviewing these plans, the Commission creates a “Community Support Framework,” which establishes the *modus operandi* of the funds for a period of three to five years.¹⁷¹ Meanwhile, a Community Support Fund establishes the financing, the forms of assistance, and the monitoring of each project financed by the EU.¹⁷²

In 1999, in the shadow of the European enlargement towards the East, another wave of cohesion policy reform limited the four objectives to three in order to minimize the increase in expenses due to the entry of new Member States in the EU.¹⁷³ In 2006, during the last significant reform wave, the EU allocated about a third of its budget—around €330 billion—to cohesion policy during the 2007-13 period.¹⁷⁴ New regulations established the general framework for structural funds, their principal objectives, their partnership rules, and the management and evaluation of specific development projects.¹⁷⁵

Today, three main objectives of the structural funds are limited to convergence, regional competitiveness and employment, and European territorial cooperation.¹⁷⁶ The aspects that characterized the 2006 reform were economic growth and a greater competitiveness to fight unemployment, the promotion of sustainable development, and a knowledge-based

170. See CRAIG, *supra* note 163, at 73.

171. See Council Regulation 4253/88, *supra* note 164, art. 8; CRAIG, *supra* note 163, at 73-74.

172. CRAIG, *supra* note 163, at 74.

173. See Council Regulation 1260/1999, Laying Down General Provisions on the Structural Funds art. 1, 1999 O.J. (L 161) 1. On these reforms, see also MICHAEL W. BAUER, *A CREEPING TRANSFORMATION?: THE EUROPEAN COMMISSION AND THE MANAGEMENT OF EU STRUCTURAL FUNDS IN GERMANY* (2001).

174. See Council Regulation 1081/2006, 2006 O.J. (L 210) 12 (repealing Council Regulation 1784/1999, 1999 O.J. (L 213) 1); Council Regulation 1083/2006, *supra* note 165 (laying down general provisions on the European Regional Development Fund, the European Social Fund, and the Cohesion Fund and repealing Regulation 1260/1999, 1999 O.J. (L 161) 1 (EC)).

175. See Council Regulation 1083/2006, *supra* note 165 (limiting the allocation of resources among three principal instruments, the European Regional Development Fund, the European Social Fund, and the Cohesion Fund).

176. See *Inforegio Factsheet 2006*, *supra* note 168.

economy.¹⁷⁷ This last wave of reform promoted greater Member State control in the implementation and management of the various projects.¹⁷⁸

Today, scholars are deeply divided between those who argue that structural funds policies have paved the way to multilevel governance between Brussels and the subnational level,¹⁷⁹ and those who argue instead that cohesion policies ultimately served to strengthen the role of the Member States as a form of “renationalization.”¹⁸⁰

Multilevel governance advocates argued that the 1999 reforms, with budgetary cuts and greater constraints on the Commission’s activism, have endangered the careful allocation of powers among the national, local, and supranational actors.¹⁸¹ This interplay of actors characterized multilevel governance in the EU where at various stages of structural planning different actors have different responsibilities.¹⁸² Liesbet Hooghe highlights that local partners have greater responsibility in the monitoring and implementation of structural programming rather than in establishing national and regional development priorities.¹⁸³ The partnership criterion, however, has proven to be somewhat problematic insofar as it has worked differently in poorer regions and has created incentives for local conflicts, rather than cooperation, between local governments and their central governments.¹⁸⁴ This principle has worked more or less effectively depending on the different territories. In England, for instance, the structural funds partnership arrangement worked better than in Scotland, where there is a greater tradition of

177. Council Regulation 1083/2006, *supra* note 165, para. 2.

178. *Id.* para. 65 (“In accordance with the principles of subsidiarity and proportionality, Member States should have the primary responsibility for the implementation and control of the interventions.”); CRAIG, *supra* note 163, at 77.

179. See Marks, *supra* note 124, at 401.

180. See MARK A. POLLACK, THE ENGINES OF EUROPEAN INTEGRATION: DELEGATION, AGENCY, AND AGENDA SETTING IN THE EU 10 (2003); Adrienne Héritier, *Differential Europe: National Administrative Responses to Community Policy*, in TRANSFORMING EUROPE: EUROPEANIZATION AND DOMESTIC CHANGE 44, 44-45 (Maria Green Cowles et al. eds., 2001).

181. Francesc Morata & Xavier Muñoz, *Vying for European Funds: Territorial Reconstruction in Spain*, in COHESION POLICY AND EUROPEAN INTEGRATION: BUILDING MULTI-LEVEL GOVERNANCE, *supra* note 151, at 195; see also Richard Balme & Bernard Jouve, *Building the Regional State: Europe and Territorial Organization of France*, in COHESION POLICY AND EUROPEAN INTEGRATION: BUILDING MULTI-LEVEL GOVERNANCE, *supra* note 151, at 219.

182. Hooghe, *supra* note 162, at 89.

183. *Id.*

184. Morata & Muñoz, *supra* note 181, at 195 (explaining that poorer regions are more problematic to implement structural funds policies for the fact that local actors are under resourced and often pervaded by clientelism). The case of domestic tug-of-war between center and regions happened in the case of Spain and with local authorities in England opposing the Conservative government by allying with the European Commission. *Id.*

decentralization of power, while overall the central government was “firmly in control of the key decisions.”¹⁸⁵

The renationalization phenomenon happened through the cooperation between the Member States and the Commission in selecting projects receiving the grants and in monitoring their implementation, which has over time shifted to emphasize a greater role for the Member States with the effect of empowering their national governments.¹⁸⁶ As scholars demonstrated, the EU is still controlled by the Member States at the expense of the Commission and other subnational entities.¹⁸⁷ In reality, through structural funding, the EU is producing a “recentralization” within its Member States by strengthening the positions of the central governments vis-à-vis their local bodies.¹⁸⁸ For instance, within the sanction and incentive instruments set up by the Commission to ensure the implementation of the projects, these processes heavily rely on the responsibility of the Member States rather than the regional or local governments, which are the ultimate beneficiaries of the funds.¹⁸⁹ Moreover, recent reforms have supported the renationalization backlash by allowing Member States to heavily determine spatial allocation of regional competitiveness and employment funding on their territories.¹⁹⁰ Finally, through the streamlining of the

185. See Ian Bache, *The Extended Gatekeeper: Central Government and the Implementation of EC Regional Policy in the UK*, 6 J. EUR. PUB. POL'Y 28, 36 (1999) (explaining that in the UK case, the national government in EU cohesion policy has become the extended gatekeeper that operates at the different stages of the structural funds policies).

186. See JOANNE SCOTT, *DEVELOPMENT DILEMMAS IN THE EUROPEAN COMMUNITY: RETHINKING REGIONAL DEVELOPMENT POLICY* 19, 27 (1995) (emphasizing that the first trend of reforms aimed at creating greater discretion of the Member States in the selection and the allocation of the Funds and highlighting that the Commission realized that the partnership principle was very weak in the implementation of the ERDF and ESF); see also CRAIG, *supra* note 163, at 81 (explaining that in the late 1980s the Commission acquired greater control over the “formulation and the identification of priorities” in drafting the guidelines for the allocation of the funds).

187. See Pollack, *supra* note 153; Carolyn Rhodes & Sonia Mazey, *Introduction: Integration in Theoretical Perspective*, in 3 *THE STATE OF THE EUROPEAN COMMUNITY: BUILDING A EUROPEAN POLITY?*, *supra* note 153, at 1, 1-3.

188. See Andrew Evans, *Regional Dimensions to European Governance*, 52 INT'L & COMP. L.Q. 21, 22, 26 (2003). The author borrows the concept of “recentralisation” from J. Biancarelli, *La Communauté européenne et les collectivités locales: une double dialectique complexe*, 60 REVUE FRANÇAISE D'ADMINISTRATION PUBLIQUE 515, 526 (1991).

189. See CRAIG, *supra* note 163, at 88-91 (explaining that the Commission has increased powers to prevent irregularities under Council Regulation 2988/95, 1995 O.J. (L 312) 1).

190. See Bachtler & Mendez, *supra* note 154, at 545. In this respect, the Lisbon strategy aiming at sustainability as well as fighting against unemployment and promoting the knowledge economy was the compromise reached by the Commission. In embracing these Lisbon objectives the Commission maintained the allocation of structural funding not only for less-developed countries, but at the same time it also recognized greater decision-making power to those member states that remained net contributors. *Id.*

programming documents promoted by the 1999 reform wave, the Member States have gained greater power vis-à-vis the Commission.¹⁹¹ Before the streamlining the Commission was able to control the Member States through long negotiations, afterwards, however, the Commission maintained much more limited bargaining power in the presentation and the selection of the projects.¹⁹² Although straightening local autonomy remains a key element in monitoring and implementing cohesion policy, there is a great amount of flexibility and variation in the negotiation process between the Member States, the local governments, and the Commission in the allocation of the funding.¹⁹³

Thus, the 2006 reforms of the structural funds for the 2007-13 period are a mixed bag.¹⁹⁴ On the one hand, the new regulations have strengthened the role of the Member States in determining what regional areas will be in need of structural help to improve regional competitiveness and employment problems in their regions.¹⁹⁵ On the other hand, the funds are spent in regions determined by an EU-wide criterion that leaves little room for decision to the Member States.¹⁹⁶ Rather than a constant gain for the Member States at the expense of the Commission, the 1999 future reforms of structural funds should be instead conceived as a “period of tug of war between both sets of actors.”¹⁹⁷

2. Challenges and Reforms of Cohesion Policy

In allocating the money to regions or cities through structural funds, Brussels ties the money to different economic and political conditions set up in its regulations. Such conditions are the result of political as well as macroeconomic choices made by the EU about the goals that should be

191. *Id.*

192. See Marks, *supra* note 151, at 394-95; Gary Marks et al., *European Integration from the 1980s: State-Centric vs. Multi-Level Governance*, 34 J. COMMON MKT. STUD. 341, 343 (1996).

193. See Bachtler & Mendez, *supra* note 154, at 548-60 (explaining how each negotiation over programming and monitoring takes place through a constant negotiation with the Commission).

194. See Council of the Eur. Union, Final Proposal from the Presidency on the Financial Perspective 2007-2013 (Dec. 19, 2005), http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/misc/87677.pdf.

195. See Bachtler & Mendez, *supra* note 154, at 544 (explaining that renationalization happened in particular in relation to the third objective of cohesion policies).

196. See David Allen, *Cohesion and Structural Funds: Transfers and Tradeoffs*, in POLICY-MAKING IN THE EUROPEAN UNION 237 (Helen Wallace & William Wallace eds., 2005).

197. See Bachtler & Mendez, *supra* note 154, at 545 (“Power relationships moved in both directions over time and the outcome varied depending on whether one is referring to eligibility criteria, designation methodologies or ceilings on coverage.”).

achieved by its cohesion policies. Local and regional governments often encounter different problems depending on their ability to share the administration of these projects with Brussels.¹⁹⁸ Because of these conditions, clashes may arise over the substance of EU development policies or simply over the procedures of this shared administration.¹⁹⁹ The 2006 Regulation reformed the partnership principle in order to include the competent regional, local, and urban, as well as economic and social partners and the other appropriate nongovernmental bodies representing civil society in the project formation.²⁰⁰ This new regulation expressly embraced the principles of nondiscrimination and sustainable development in pursuing the implementation of cohesion policy.²⁰¹

Structural funds, which comprised about 35% of the EU budget corresponding in 2007 to €45.5 billion,²⁰² were strongly connected to local autonomy and urban development by Commissioner for Regional Policy, Danuta Hübner.²⁰³ While in the 1990s, the approach to develop-

198. See Kevin Featherstone, *Introduction in GREECE IN A CHANGING EUROPE: BETWEEN EUROPEAN AND BALKAN DISINTEGRATION?* 3, 4 (Kevin Featherstone & Kostas Infantis eds., 1996).

199. Clashes can arise between substantive development goals enlisted by Brussels and the local understandings of regional development. Thus, local actors perceive Europeanization as a new form of imposition that is even more problematic than state control. See Loukas Tsoukalis, *Is Greece an Awkward Partner?*, in *GREECE IN A CHANGING EUROPE: BETWEEN EUROPEAN AND BALKAN DISINTEGRATION*, *supra* note 198, at 24, 25.

200. See Council Regulation 1083/2006, *supra* note 165 para. 11.

201. *Id.* para. 2. This pluralist approach toward local actors coupled with a strong commitment to sustainability is part of the Lisbon strategy that has enlisted cities along with other subnational actors, as the main beneficiaries of structural funds policies. *Id.*

202. Cornelius Bähr, *How Does Sub-National Autonomy Affect the Effectiveness of Structural Funds?*, 61 *KYKLOS* 3, 4 (2008). In response to the need of greater decentralization in cohesion policy in order to more consistently involve local governments the Council adopted a 2006 regulation of the structural funds and the Commission has adopted a communication on *Cohesion Policy and Cities*. Annex to the Communication from the Commission to Council and Parliament Cohesion Policy and Cities: The Urban Contribution to Growth and Jobs in the Regions, COM (2006) 385 final (July 13, 2006) [hereinafter *Urban Contribution*]; see Council Regulation 1083/2006, *supra* note 165 (laying down general provisions on the European Regional development Fund, the European Social Fund, and the Cohesion Fund, and repealing Regulation 1260/1999 (EC)).

203. *Urban Contribution*, *supra* note 202, at 3. President Danuta Hübner put forward a new agenda promoting urban development as a better strategy to achieve economic growth as well as to create more jobs, foster social inclusion, and improve environmental quality, which became the Community Strategic Guidelines for Cohesion. *Id.* This document sets the framework and future priorities for European funded programs from 2007 to 2013. *Id.*; see also *Inforegio Factsheet 2006*, *supra* note 168. The current guidelines establish the highest investment ever made by the EU through cohesion instruments aiming to support regional growth. The main allocation of wealth is distributed according these percentages:

81.54% of the total amount will be concentrated on the “Convergence” objective, under which the poorest Member States and regions are eligible. In the remaining regions, about 15.95% of the Structural Funds will be concentrated on supporting innovation, sustainable development, better accessibility and training projects under the “Regional

ment by the Community was very unidirectional, in the sense that under the rubric of development policy Brussels was circumscribed strictly to economic rather than other forms of social and sustainable development.²⁰⁴ Today, flexibility and sustainability have become part of the new guidelines addressing structural funds.²⁰⁵

In its 2006 Communication, the Commission set new urban goals for the EU cohesion policy.²⁰⁶ Its urban policy includes not only typical economic development goals but also sustainable growth objectives, supporting innovation in entrepreneurship through the knowledge economy to create more and better jobs in urban settings. For instance, in order to make cities “more attractive,” the Commission envisages cities that will attract investments while creating more jobs through the enhancement of public-private partnerships and the privatization of city services.²⁰⁷ The justifications put forward for this sustainable agenda are still market-driven, rather than oriented towards a form of social citizenship.²⁰⁸ The linkage between sustainability and economic develop-

Competitiveness and Employment” objective. Another 2.52% will be available for cross-border, transnational and interregional co-operation under the “European Territorial Co-operation” objective.

Id.

204. From this perspective, Joanne Scott addressed what she called the “accounting syndrome” of the community in its regional development policy:

It is then apparent that the Community’s preoccupation with rising per capita GDP as the ultimate expression of development not only fails to address the issue of the distribution of benefits which can be secured by way of a rising income but also marginalizes, almost to the point of irrelevance, those material dimensions of human need, be it in relation to the provision of health care, education, public utilities or transport, which cannot realistically be purchased by the isolated consumer.

See SCOTT, *supra* note 186, at 55.

205. See *Communication from the Commission on the Simplification, Clarification, Coordination and Flexible Management of the Structural Policies 2000-06*, EUR. COMM’N (Apr. 25, 2003), http://europa.eu/legislation_summaries/regional_policy/management/g242224_en.html (pushing the Member States to introduce soft law reforms in addressing the selection, responsibility, and management of the projects). As to sustainability, the urban dimension has heavily promoted an “integrated approach” to cohesion policy, which links economic growth through full employment with social and environmental goals. Urban Contribution, *supra* note 202, at 25.

206. See Urban Contribution, *supra* note 202, at 4.

207. The central features to promote this economic growth strategy consist of the improvement of transportation infrastructure, greater access to modern and affordable services, the conservation of the environment, and the promotion of the cultural sector in each city. See *id.*

208. The urban development projects could be supported within the framework of the ERDF, the European Social Fund (ESF), and the Cohesion Funds. The communication also suggests assistance from the new financial instruments JASPERS, JEREMIE, and JESSICA, and from public-private partnerships. See *The Funds: Special Supporting Instruments*, EUR. COMM’N, http://ec.europa.eu/regional_policy/thefunds/instruments/index-en.cfm (last visited Nov. 9, 2011).

ment is now a top priority on the Commission agenda. As development scholars have noted, a similar linkage between gender, environmental, and social goals has characterized the new development policy trends of the World Bank and other major financial institutions.²⁰⁹ Whether neoliberalism is just reappearing in new clothes or whether sustainability is a real priority on the Commission agenda remains an ambiguity at the core of EU cohesion policy.²¹⁰

Commentators noted that the term “cohesion” means more than economic convergence because it has a “dual aim of reducing regional disparities and boosting aggregate competitiveness.”²¹¹ Regarding this duality a constant tension emerges reflecting a deeper divide between two opposite development objectives: neoliberalism versus regulated capitalism.²¹²

The neoliberal objective is to create an internal market insulated from political and governmental interferences. In this respect, cohesion policy has more an allocative rather than a distributive function, whereby it aims to stimulate growth and competitiveness in the market by increasing GDP per head rather than redistributing income to poorer regions.²¹³ Behind neoliberalism lies the idea of offering incentives to local governments in order to compete as best suppliers in the offer of public goods to European consumer-citizens.²¹⁴ Thus the neoliberal agenda for cohesion policy promotes greater subsidiarity by stimulating competitiveness among the regions.²¹⁵

209. See Kerry Rittich, *The Future of Law and Development: Second-Generation Reforms and the Incorporation of the Social*, in *THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL* 203, 203 (David M. Trubek & Alvaro Santos eds., 2006).

210. See Christian Iaione, *Local Public Entrepreneurship and Local Self-Government—The Rule of Law and the Role of the Judiciary: The Aftermath of Global Competition Among Local Governments?* 3-4, 6 (N.Y. Univ. Law Sch., Pub. Law Research Paper No. 07-07, 2007), available at <http://ssrn.com/abstract=977321> (reading the EU framework as promoting local public entrepreneurship).

211. See Iain Begg et al., *Cohesion in the EU*, 9 *CESIFO F.* 3, 3 (2008).

212. See CHRIS RUMFORD, *EUROPEAN COHESION? CONTRADICTIONS IN EU INTEGRATION* 67 (2000). In describing the conflicting visions behind cohesion strategies in the EU, Chris Rumford has persuasively shown how two competing narratives pervade European development strategies: cohesion and autonomization. Rumford portrays the autonomization as a narrative with strong ties to neoliberalism that promote regionalism as a way to favor growth and less centralized state control, while “the region enters this political arena on the side of the market.” *Id.* at 68.

213. See Marks, *supra* note 151, at 391.

214. See Fernando Christian Iaione, *Local Public Entrepreneurship and Judicial Intervention on Euro-American Global Perspective* (2007) (unpublished manuscript), http://works.bepress.com/fernando_christian_iaione/3/.

215. See Iain Begg, *Subsidiarity in Regional Policy*, in *SUBSIDIARITY AND ECONOMIC REFORM IN EUROPE* 291, 305-06 (George Gelauff, Isabel Grilo & Arjan Lejour eds., 2008).

Conversely, the regulated capitalism objective aims to promote an EU capable of “regulating markets, redistributing resources and shaping partnership among public and private actors.”²¹⁶ The Commission in the post-Lisbon scenario has appropriated this notion, which goes back to Jaques Delors’ idea of “*espace organisé*,” to promote economic development by enlisting decentralized approaches, flexibility, and sustainability in its agenda.²¹⁷

Because of these conflicting aims, the effectiveness of cohesion policy has been highly contested.²¹⁸ Some economists have shown that the beneficial effects of structural funds can be measured through the enhancement of human capital which differs enormously from state to state.²¹⁹ Because of the challenges to their effectiveness and the increasing difficulties for the EU to sustain large disbursement of funds in the midst of a financial crisis, politicians and technocrats have suggested either severely cutting these expenditures for the new disbursement period of 2014-2020 or increasing their use in a more targeted way vis-à-vis Greece and Ireland.

In 2008, the Commission addressed some of the problems with cohesion policy in its Green Paper, *Territorial Cohesion: Turning Territorial Diversity into Strength*, where it acknowledges that in order to achieve a more balanced and harmonious development, cohesion policies should adjust to the most appropriate territorial scale.²²⁰ Since 2009, with the publishing of the Barca Report endorsed by the Commission, the objective of reforming cohesion policy has become a priority.²²¹ The report proposes some important reforms such as departing from targeting

216. Liesbet Hooghe & Gary Marks, *The Making of a Polity: The Struggle over European Integration*, in CONTINUITY AND CHANGE IN CONTEMPORARY CAPITALISM 86 (Herbert Kitschelt et al. eds., 1999).

217. See JAQUES DELORS, OUR EUROPE: THE COMMUNITY AND NATIONAL DEVELOPMENT (1992); see also SCOTT, *supra* note 186, at 16-74 (arguing that a sustainable development approach should take into account both distributive consequences and human flourishing in promoting local welfare).

218. See ROBERT LEONARDI, COHESION POLICY IN THE EUROPEAN UNION: THE BUILDING OF EUROPE 8 (2005) (pointing out that the outcome of structural funds can be measured when cohesion policy “represents a political goal tied to the pursuit of a more egalitarian and just society capable of creating opportunities for all EU citizens”).

219. See Bähr, *supra* note 202; Simón Sosvilla Rivero, *EU Structural Funds and Spain’s Objective 1 Regions: An Analysis Based on the Hermin Model* (FEDEA Working Paper No. 2005-24, Oct. 2005), available at <http://ssrn.com/abstract=844145>.

220. This would mean “more responsive to local preferences and needs and better coordinated with other policies, at all levels in conformity with the principle of subsidiarity.” See *Communication from the Commission to the Council, the European Parliament, the Committee of the Regions and the European Economic and Social Committee, Green Paper on Territorial Cohesion, Turning Territorial Diversity into Strength*, at 4, COM (2008) 616 final (Oct. 6, 2008).

221. See BARCA REPORT, *supra* note 160.

the Regions “lagging behind” to distributing funding among Member States and Regions based on their “needs and strategies.”²²² Most interestingly the report takes economic geography seriously by introducing both conceptual as well as institutional innovative aspects. For instance, it suggests using a new paradigm with a place-based policy to tackle “persistent underutilisation of potential and reducing persistent social exclusion in specific places through external interventions and multilevel governance.”²²³ In Barca’s view:

The place-based approach goes beyond the traditional dilemma of fiscal federalism whether to decentralise or centralise any given public function. The responsibility for policy design and implementation is allocated among different levels of government supported by both contractual relations and trust, with a role being played by special-purpose institutions.²²⁴

In using an economic geography lens, the report is acknowledging that the causes creating economic disparity across otherwise similarly situated geographical regions is the result of historical accidents, path dependence, and spatial persistence that should be addressed by pursuing both growth and competitiveness in the region.²²⁵ In creating a leading role for the Commission, at the expense of national and local governments, the Barca Report suggests a more centralizing role for the Directorates General (DG) Regio in order to allocate resources and basic services to different territories. This “refocusing and strengthening” of the DG Regio would provide better skills in designing the development agenda as well as implementing and monitoring the projects.²²⁶

Another institutional innovation of the Barca Report is to contractualize the relation between the Commission and the Member States in order to create more leverage for the Commission and better tailor the development policy to the “needs of places.”²²⁷ Even though these contracts are not a new initiative, past experiences have not been very successful because they were an attempt to decentralize power rather than achieving targeted objectives in which the Commission

222. *Id.* at XVIII; *see also* Caruso, *supra* note 121 (commenting on this shift of the Barca Report).

223. BARCA REPORT, *supra* note 160, at VII (“[T]his strategy is superior to alternative strategies that do not make explicit and accountable their territorial focus, or even hide it behind a screen of self-proclaimed space-blindness, fail to integrate services, and either assume that the State knows best or rely on the choices and guidance of a few private actors.”).

224. *Id.* at XI.

225. *See* Schragger, *supra* note 8, at 1888.

226. *See* BARCA REPORT, *supra* note 160, at XXIII.

227. *See id.* at XVI.

provided very little guidelines, for instance through the so-called Tripartite Agreements.²²⁸ These agreements among the Commission, the Member States, and their subnational actors were an attempt to involve local governments directly in developing localized strategy.²²⁹ Member States, instead of the regions, would share the liability of implementing the projects and the Commission retained the ultimate responsibility of executing, monitoring, and enforcing the projects. Thus, the substantial involvement of the Member States in TAs limited the autonomy and the visibility of subnational actors.

In 2004, the Commission enacted the first TA with the Italian government and the Lombardy Region and this soon became an example of the limited authority of the region in these types of agreements.²³⁰ Milan was ravaged by pollution as a result of the quantity of vehicles continually flooding the city from the entire region.²³¹ Rather than adopting an environmental directive, the Commission addressed the problem by directly financing a solution plan with the Lombardy region and the Italian government.²³² The general principles of the contractual agreement regulating this partnership defined the responsibility of the Italian government in the final execution of the project.²³³ However, in 2005, the contract was suspended by the Italian government. The Commission's role in the TAs was to assess the results of the partnership and improve governance.²³⁴ After Milan, three European cities created

228. See *Communication from the Commission, A Framework for Target-Based Tripartite Contracts and Agreements Between the Community, the States and Regional and Local Authorities*, at 2, COM (2002) 709 final (Dec. 11, 2002).

229. See ESPON PROJECT 2.3.2, GOVERNANCE OF TERRITORIAL AND URBAN POLICIES FROM EU TO LOCAL LEVEL 44 (Dec. 30, 2004), http://www.espon.eu/exports/sites/default/Documents/Projects/ESPN2006/Projects/PolicyImpactProjects/Governance/1.ir_2.3.2.pdf [hereinafter ESPON PROJECT 2.3.2] (“The need of formal settlements to make territorial governance accountable and effective has led the Commission to propose target-based tripartite contracts and agreements between the Community, the States and the regional or local authorities as a flexible means of taking specific contexts into consideration when drawing up and implementing Community policies.”).

230. Tripartite Agreement, European Commission, Italian Government, Lombardy Region (Oct. 15, 2004), http://www.ec.europa.eu/governance/docs/texte_convention_tripartite_en.pdf.

231. *Id.*

232. *Id.*

233. *Id.* art. 8. While Lombardy did not actively commit to the agreement in terms of determining the “specific and quantifiable policy objectives to attain,” the agreement has been “used by both European and the regional tiers more for its instrumental added value than for its specific environmental policy outputs.” Martino Mazzoleni, *The First Tripartite Agreement in the EU: An Actor-Centred Analysis of an Experimental Multi-Level Interaction*, 16 REGIONAL & FED. STUD. 263, 273 (2006).

234. Article 3 of the Tripartite Agreement states the objective of the Agreement as improving through better governance the implementation of EU policies . . . through a wide involvement of the stakeholders in the policy making. This involvement will

similar target-based agreements: Lille (France), Birmingham (UK) and Pescara (Italy).²³⁵ Despite the enthusiasm of the Commission reports on governance, TAs did not become an important model of governance in the EU.

One problem was the political instability that characterized these agreements, especially when two opposing political parties controlling the central and the regional government would struggle in reaching an agreement on the policy goals and the sharing of resources. In the case of Milan, the Lombardy region successfully joined political forces with Rome and Brussels to fight pollution.²³⁶ However, the alliance was at risk and it became unstable when the center-right coalition in power both at the national and regional levels lost the national elections. Rather than developing collaborative local networks, TAs cooperation was based on political collaboration through domestic party politics instead of pragmatic policy proposals.²³⁷ Another problem was their competitive rather than the cooperative nature.²³⁸ As a result, TAs increased competition among regions and cities in order to attract resources both at the national and European level.²³⁹

Local governments remained suspicious of TAs and only a limited number of proposals were implemented.²⁴⁰ Instead of fostering federal-local cooperation and undermining state control to foster decentralization, national governments were fully in control of the funding and the enforcement of these projects. Similar to cohesion policy, this is another example of how decentralization through the disbursement of EU funds simply meant renationalization rather than

result in an effective local governance process . . . from the involvement of, and close participation by, the authorities and local bodies in the implementation of European policies and programmes that have a significant impact on the area.

Tripartite Agreement, *supra* note 230.

235. See ESPON PROJECT 2.3.2, *supra* note 229, at 44.

236. Tripartite Agreement, *supra* note 230.

237. See Mazzoleni, *supra* note 233, at 265, 276-77.

238. Christiansen and Lintner observed that “a greater systematisation of the permanent dialogues between the Commission and the single associations could lead to the rather paradoxical outcome of competition between the regions and the CoR, with the latter claiming that it is the only body to officially represent regional interests at the European level.” Christiansen & Lintner, *supra* note 66, at 3; see also Christopher K. Ansell et al., *Dual Networks in European Regional Development Policy*, 35 J. COMMON MKT. STUD. 347, 350 (1997) (exemplifying how EU regional development policy has triggered structural patterns of either cooperation or competition among regions competing for money).

239. See Mazzoleni, *supra* note 233, at 266.

240. See *Tripartite Contracts and Agreements*, EUR. COMM’N, http://europa.eu/legislation_summaries/regional_policy/management/g24220_en.htm (last updated June 27, 2006) (giving no specific example of these contracts implemented by regional policy).

better cooperation among the different levels of government to achieve a common goal.

B. Three Case Studies: Why the Context Matters

This Subpart shows how the legal, the socioeconomic, and the territorial dimensions in each periphery plays a key role in determining whether the cooperation between the EU and its subnational governments is ultimately beneficial or not for local development in a particular Member State.

1. Lack of Legal Standing for Sicily

Since the mid-1990s, in the framework of cohesion policy, the Court of First Instance (CFI) can review the decisions of the Commission adopted during the different implementation phases of the structural funds.²⁴¹ Thus, every decision adopted by the Commission to suspend or reduce the funding of an approved project can be subject to judicial review before the CFI as long as the applicants have legal standing.²⁴² In contrast to Member States and EU institutions, municipalities and regions are not privileged applicants before the ECJ or the CFI in challenging EU legislation.²⁴³ Several of these cases on local standing were raised in the context of the Commission decisions about the allocation or the suspension in the payment of Regional (ERDF) or other types of EU funds to beneficiary regions.²⁴⁴

Both critics of regional blindness and new governance advocates see in the *locus standi* before the Courts a means to assert the importance

241. See Case T-465/93, *Consorzio Gruppo di Azione Locale Murgia Messapica v. Comm'n*, 1994 E.C.R. II-361 paras. 1-3.

242. See Scott, *supra* note 19, at 636-37 (commenting on the lack of legal standing of the applicants in CFI Case T-585/93, *Greenpeace and Others v. Comm'n*, 1995 E.C.R. II-2205, and Case C-321/95 P, *Stichting Greenpeace Council (Greenpeace International) and Others v. Comm'n*, 1998 ECR I-1651).

243. See TFEU art. 263, para. 2 (providing for jurisdiction only in suits brought by the European Council, the Parliament, the Council or the Commission); *id.* art. 263, para. 3 (giving quasi-privileged standing to the Court of Auditors, the European Central Bank, and the Committee of the Regions); Case C-95/97, *Région Wallonne v. Comm'n*, 1997 E.C.R. I-1787; Case C-452/98, *Nederlandse Antillen v. Council*, 2001 E.C.R. I-8973; Case C-417/04, *Regione Siciliana v. Comm'n*, 2006 E.C.R. I-3881; Piet Van Nuffel, *What's in a Member State?: Central and Decentralized Authorities Before the Community Courts*, 38 COMMON MKT. L. REV. 871, 872 (2001).

244. See Case C-180/97, *Regione Toscana v. Comm'n*, 1997 E.C.R. I-5245; Case T-81/97, *Regione Toscana v. Comm'n*, 1998 E.C.R. II-2889; Case C-417/04, *Regione Siciliana*, 2006 E.C.R. I-3881; Case C-15/06 *Regione Siciliana v. Comm'n*, 2007 E.C.R. I-2591.

of decentralization and regional autonomy.²⁴⁵ In adopting different types of justifications, both groups suggest that by expanding legal standing to local governments to review EU law in Luxembourg, such measures will inevitably give a voice to local actors and in turn promote decentralization in Europe.²⁴⁶

In *Regione Siciliana*, local-federal cooperation on a development project ended up backfiring and the involvement of the Italian government did not change the outcome of a failed development project.²⁴⁷ In December 1987, the European Commission approved a grant to the Region of Sicily in Italy to finance, through the ERDF, the final stage of works on the Gibbesi Dam.²⁴⁸ The purpose of the project was to create a reservoir of water coming from the Gibbesi River that would supply water to a planned industrial center to be built nearby in the Licata province. A secondary objective of the dam was to provide water to improve irrigation over 1000 hectares of land used for agricultural purposes.²⁴⁹ The ERDF was supposed to cover 55% of the project, and

245. See Opinion of the Committee of the Regions on the Treaty Establishing a Constitution for Europe, 2005 O.J. (C 71) 1, 4, para. 1.28; Koen Lenaerts, President of Chamber at the EU Court of Justice, Address to REGLEG Conference: Access of Regions with Legislative Powers to the European Court of Justice I (May 20, 2008). As to different conceptions of pluralism in constitutional litigation, see David Feldman, *Public Interest Litigation and Constitutional Theory in Comparative Perspective*, 55 MOD. L. REV. 44 (1992).

246. For instance, the critics of regional blindness have denounced the fact that regions have “no direct access to the EC law-making processes and, moreover, that they have little opportunity to challenge the validity of acts before the European Community’s judicature, where they have no better standing under Article 230 than a private individual.” See Weatherill, *supra* note 106, at 5.

Conversely, new governance advocates have addressed the question of *locus standi* not in direct relation to the issue of local governments but rather in their effort to reconceptualize the role of the judiciary in the new governance project. See Joanne Scott & Susan Sturm, *Courts as Catalysts: Re-Thinking the Judicial Role in New Governance*, 13 COLUM. J. EUR. L. 565 (2007).

247. Case C-15/06, *Regione Siciliana*, 2007 E.C.R. I-2591.

248. See Joined Cases T-392/03, T-408/03, and T-435/03, *Regione Siciliana v. Comm’n*, 2008 E.C.R. II-2489, para. 1.

249. See Case T-60/03, *Regione Siciliana v. Comm’n*, 2005 E.C.R. II-4139, para. 88 (“[I]n the applicant’s view, the fact that the water retained by the dam is henceforth wholly intended for irrigation and no longer also for the cooling of industrial plant does not alter the nature of the works in question, which is that of forming a reservoir of water for the common good. The applicant mentions in this connection, without being contradicted by the Commission, that provision had always been made for the water retained by the dam to be used to irrigate some 1000 hectares of land. It is the fact that the industrial centre which was from 1986 on to have been built at Licata has never been started that has made irrigation the principal use of the water. That state of affairs was reported to the Commission, it then being indicated that the works still had a social and economic role to play in regional development. In this respect, it must be considered that the dam, situated in a region that suffers from a serious lack of water for private, agricultural and industrial use, might, on account of the quality of its water, satisfy many needs, including that of drinking water, and form part of a broader overall scheme of water-supply operations cofinanced by the ERDF.”).

the rest was to be financed by national and regional money provided by the Italian authorities according to the additionality criterion established by cohesion policies.²⁵⁰ The Commission sponsored €39 million in advance and was supposed to pay a final amount of €10 million upon completion of the project.²⁵¹ While the construction works were finished in November 1992, the Italian authorities asked for an extension of the deadline for presenting the final report and payment request in March 1995.²⁵² However, in 2000, when the Italian authorities sent a financial report to the Commission, they also mentioned that the project was not finished and they needed the final payment to complete and start operating the Gibbesi Dam.²⁵³ In September 2001, the Commission told the Italian authorities that the financial report was unclear because there were irregularities in it and there was a possible cancellation of the final grant.²⁵⁴ In 2002, the Commission decided to revoke the grant decision of 1987 because the project was not yet operational. In the same decision the Commission requested that the Italian government repay €39 million to Brussels and that the final amount of €9.8 million should be immediately decommitted from the Gibbesi project.²⁵⁵

Following this decision, the Sicilian Region, the main beneficiary of the grant, decided to sue the European Commission to seek the annulment of its decision before the CFI. The region questioned the fact that in the Commission's decision the finding of the irregularities in the payment did not provide a valid basis for revoking the entire fund.²⁵⁶ In response, the Commission argued that despite the fact that the applicant had an individual interest in the outcome, it would nevertheless not have standing because it was not directly concerned insofar as the structural fund policies create a joint responsibility for the Commission and the Member States only.²⁵⁷ Moreover, rather than the regions being the interlocutors with the Commission in receiving the regional grants, the Member States are the main interlocutors with the Commission in the "system of decentralised management that constitutes one of the fundamental features of the structural funds."²⁵⁸ Thus, according to the Commission, the Italian government "enjoyed some discretion in the

250. *Id.* para. 4.

251. *Id.*

252. *Id.* para. 7.

253. *Id.* para. 5.

254. *Id.* para. 10.

255. *Id.* paras. 13-15.

256. *Id.* paras. 19, 21.

257. *Id.* paras. 23-24.

258. *Id.* para. 27.

implementing of the contested decision.²⁵⁹ On this point, the CFI ruled that the plea of inadmissibility by the Commission was rejected because the contested decision left no discretion to the Italian government on its implementation.²⁶⁰

As to the substance of the Commission's decision, there were two main conflicts where the parties' opposite opinions over empirical issues call into question whether the CFI is more appropriate for such litigation. On the one hand, the parties contested whether the Gibbesi Dam Project was nearly completed, and on the other, they contested whether the scope of the Dam had changed from the original industrial objective upon which it was funded by the Commission through the ERDF.²⁶¹

As to the completion of the Dam, the Court held that the Commission was right on the fact that the Dam had not been completed, and what Sicily claimed were only minimal parts of a huge infrastructure were instead an integral rather than an ancillary part of the work at issue.²⁶² As to the changing objective of the project, Sicily argued that "the fact that the water retained by the dam is henceforth wholly intended for irrigation and no longer also for the cooling of industrial plants does not alter the nature of the works in question, which is that of forming a reservoir of water for the common good."²⁶³

While the Commission accepted the Gibbesi Dam proposal as purely an industrial project, in contrast, Sicily claimed that the Dam had been planned with the purpose of irrigating some 1000 hectares of land.²⁶⁴ In addition, the Region had agreed to supervise the creation of an industrial center that starting in 1986 was supposed to be built in the outskirts of the city of Licata, the southern harbor of the island that would have competed with Catania and Palermo.²⁶⁵ However, the construction of the industrial center had never been started, and irrigation, which was not completed yet, had become the principal use of

259. *Id.*

260. *Id.* paras. 54, 57, 68 ("[T]he contested decision also directly alters the applicant's legal situation with regard to the duty to repay the sums paid by way of advances (approximately €39 million). In point of fact, the effect of the contested decision is directly to change the applicant's legal status from that of unarguably being a creditor in respect of those sums to that of debtor, at least potentially. The reason is that the contested decision means that it is no longer impossible for the national authorities under both Community and domestic law to demand repayment from the applicant of the sums advanced. In other words, the second direct and automatic effect of the contested decision is to change the applicant's legal situation vis-à-vis the national authorities.").

261. *Id.* paras. 69-72.

262. *Id.* para. 83.

263. *Id.* para. 88.

264. *Id.*

265. *Id.*

the water collected by the Gibbesi Dam.²⁶⁶ Nevertheless, when the Sicilian region had to report the state of affairs to Brussels in order to receive the last payment, it mentioned that the Dam in that particular geographic setting played a significant social and economic role for the development of the region.²⁶⁷ However, the CFI held:

Given . . . that the intended use of the project was significantly changed without the Commission's prior approval, because the main objective of supplying water to the complex at Licata was not attained, it must follow that cancellation of the assistance is warranted in light of Article 24 of Regulation No. 4253/88.²⁶⁸

This is not the first case in which money was withheld from the applicant because of the changing objective or the changing plan of the project during its implementation. Every construction project inevitably incurs structural changes resulting from the nature of the territory, in particular geographical areas where drought is increasingly becoming a threat.²⁶⁹ Despite the fact that the CFI has interpreted incredibly strictly the objectives under which the projects have been approved, especially when the changing project requires more disbursement on the part of the Commission, there are a large number of technical evaluations regarding the necessity of a change in the approved project that might be better evaluated through a different procedure rather than bringing the case in Luxembourg.²⁷⁰

The Sicilian region then appealed the case to the ECJ which upheld the decision of the CFI but rejected its reasoning by holding that the region lacked standing and that its action was inadmissible.²⁷¹ The ECJ

266. See Caruso, *supra* note 121, at 6 ("Its construction started in the 1980s and is now completed, but the proper infrastructure of channels that would allow for the agricultural fruition of the river's water is still lacking. As a result, the precious water that accumulates from time to time goes wasted, and many fields stay tragically dry.").

267. Case C-15/06, *Regione Siciliana v. Comm'n*, 2007 E.C.R. I-2591.

268. *Id.* para. 102.

269. The threat is due to an archeological capital in the surrounding Agrigento temples, as well as a specific *mentalité* that is flexible and open to changes in undertaking the building of large infrastructures.

270. See Case T-272/02, *Comune di Napoli v. Comm'n*, 2005 E.C.R. II-1849 (finding that Naples got funding to build a subway station and the grant was awarded, with a fix cap of euros that Italy has originally required to build an underground rail of the subway). During the construction work, the city of Naples decided it needed to move the project, which would cost more money, in order to avoid serious traffic problems. *Id.* para. 10. The city changed the project in relying on further ERDF funding up to the maximum amount allocated but the Commission did not award the rest of the money. Despite Naples' reliance on the funds to build the subway, the ECJ upheld the Commission's decision. *Id.*; see also Case C-46/03, *U.K. of Gr. Brit. & N. Ir. v. Comm'n*, 2005 E.C.R. I-10167 (holding the United Kingdom wins in a similar scenario in which the Commission has refused to pay for the last installment of funds).

271. See Case C-15/06, *Regione Siciliana*, 2007 E.C.R. I-2591, para. 44.

held that the applicant was not directly concerned with the Commission's decision to refuse to pay the last tranche of the grant.²⁷² The ECJ interpreted the annex to the decision to grant, where the Region "is referred to as the authority responsible for the application for financial assistance" rather than the beneficiary of the grant.²⁷³ According to the court, a direct relationship exists only between the Union granting the funds and the states that are principally responsible for the repayment of the money instead of the region.²⁷⁴ The region is mainly an emanation of the state without autonomy or responsibility in this case.²⁷⁵ Even now, the Gibbesi Dam has not been completed and it remains one of the most scandalous projects, standing out as the nightmare scenario in the allocation of a large amount of structural funds over a long period of time.²⁷⁶

Following this case, in *Ville Vesuviane*, the European Court reached a similar conclusion, namely that the Ente, the local authority in charge of the renovation, was not directly affected by the decision of the Commission to close its regional development fund assistance.²⁷⁷ In following Advocate General Kokott's opinion and overruling the decision of the CFI, the Court held that the Italian state remained the directly concerned actor affected by the decision of the Commission even if the Italian government claimed it was willing to recover the lost sums from the Ente, thus showing it was a separate local institution.²⁷⁸

In both cases where the European Court decides not to give standing to the local actors who are also the beneficiaries of the EU regional development funds, the questions are whether these problems should be a matter for law instead of politics, and whether the ex post review of the ECJ is at all appropriate for these projects. Increasingly the World Bank, and also the European Investment Bank and the European

272. *Id.*

273. *Id.* para. 36.

274. *Id.*

275. *See, e.g.*, *Hunter v. City of Pittsburg*, 207 U.S. 161, 178 (1907).

276. *See Diga Di Gibbesi: Una Struttura Della Diga Mai Terminata, Dopo Oltre Vent'anni Di Lavoro* (Gibbesi Dam: *An Unfinished Structure After Twenty Years of Work*), CONTRASTO, <http://www.contrasto.it/index.php> (last visited Oct. 1, 2011).

277. *Joined Cases C-445/07 P and C-455/07 P, Comm'n v. Ente per le Ville Vesuviane*, 2009 E.C.R. I-7993 para. 1-2.

278. *Id.* para. 60 ("As stated by the Advocate General in point 64 of her Opinion, the findings of the Court of First Instance are insufficient to draw inferences regarding the subsequent conduct of the addressee of the contested decision. It is not possible solely from the legally non-binding pronouncement by the Italian authorities of their intention to recover the assistance from Ente to arrive at the conclusion that Ente is directly concerned, since, amongst other things, it cannot be ruled out that special circumstances might lead the Italian State, as one of Ente's shareholders, to forebear from claiming the repayment from Ente.").

Bank for Reconstruction and Development, have used alternative accountability mechanisms addressing the implementation of their financed projects. In doing so, they have opened themselves to possible criticism from individuals, NGOs, and other local actors affected by their development projects. Scholars have written on the important role of these accountability mechanisms in opening international financial bodies to criticisms, changing the behavior of the management and allowing a wide range of affected parties to monitor and bring complaints through several inspection panels of administrative mechanisms.²⁷⁹

An accountability mechanism of this sort might prevent getting the European Court into the game at a very late stage in the process and having to deal with a subject matter that requires much more input from locally and territorially based expertise and should therefore conduct more research on the goals and the mechanism to implement the project. For instance, in addressing social exclusion and how to prevent certain populations from ending up in a poverty situation by targeting income, education, health, and employment, the Barca Report explains that a “territorialised social agenda” needs to build on local knowledge on how to involve the local constituencies in sharing knowledge and experience.²⁸⁰ Barca suggests that in this context:

The action of the EU Court of Justice can undo national rules that produce perverse social results, but cannot positively build new rules which address the issue. The option of transferring sovereignty for welfare intervention to the EU, as in economic areas, is not feasible owing to cultural diversity and differing national aspirations and social models as well as to the lack of political legitimacy of the EU level of government.²⁸¹

Thus, the European Court might not be the appropriate forum to adjudicate if the decisions of the Commission to stop the disbursement of the funds, given its narrow working tools, based on the interpretation that article 263(4) of the TFEU is in clear contrast with a deeper and more territorially attuned understanding of how to create local development and who are the constituencies directly impacted by EU cohesion policy.

279. See David Hunter, *Using the World Bank Inspection Panel to Defend the Interests of Project-Affected People*, 4 CHI. J. INT'L L. 201, 202, 210-11 (2003); Mariarita Circi, *The World Bank Inspection Panel: Is It Really Effective?*, 6 GLOBAL ADMIN. L. & GLOBAL GOVERNANCE 1 (2006); Daniel D. Bradlow, *International Organizations and Private Complaints: The Case of the World Bank Inspection Panel*, 34 VA. J. INT'L L. 553, 554, 556 (1994).

280. BARCA REPORT, *supra* note 160, at 120.

281. See *id.* at 122-23.

2. Intranational Heterogeneity: German *Länder*

The creation of federal-local cooperation in each Member State cannot be generalized because of a great deal of variation that takes place within each Member State. Intranational heterogeneity in the behavior of subnational actors toward the EU has increasingly attracted scholarly attention.²⁸² Each region, province, or city is different from another due to its different geographic, economic, and political power that mobilizes regional and local elites vis-à-vis the national governments and vis-à-vis the EU in very different ways. This Part explores the tensions that arose between the thirteen *Länder* in the postunification regime of the 1990s in order to show how intra-*Länder* disparities have triggered very diverse patterns toward European cohesion policies. These disparities are either grounded in different political ideologies, left or right, or they emerge from wealth inequalities among the *Länder*.

As several authors demonstrated in Germany, among thirteen *Länder*, with different levels of wealth and political cultures, EC development policies triggered very different outcomes.²⁸³ Imagining a continuum in the behavior of the German *Länder*, on the one hand, some *Länder* became the perfect example of multilevel governance whereby they created a successful alliance with the Commission in the implementation of structural funds while undermining the power of their central government. On the other end of the continuum, other *Länder* have engaged with different intensity with EU cohesion policies. However, they have found a more productive collaboration with the central government, albeit by entering into conflicted relations with Brussels. Finally, those *Länder* who have received very little or no structural funds from Brussels have sought greater autonomy from the EU and its increasing expansion of competence over their social welfare domains.

Some authors have explained intranational heterogeneity in Germany through political and ideological differences characterizing the political elites governing each *Länder*.²⁸⁴ For instance, the two major ideologies that predominated during the drafting of the Constitutional

282. See, e.g., TANJA A. BÖRZEL, STATES AND REGIONS IN THE EUROPEAN UNION: INSTITUTIONAL ADAPTATION IN GERMANY AND SPAIN (2002); Pieter van Houten, *Globalization and Demands for Regional Autonomy in Europe*, in GOVERNANCE IN A GLOBAL ECONOMY: POLITICAL AUTHORITY IN TRANSITION 110, 111 (Miles Kahler & David A. Lake eds., 2003).

283. See Michael W. Bauer, *The German Länder and the European Constitutional Treaty: Heading for a Differentiated Theory of Regional Elite Preferences for European Integration*, 16 REGIONAL & FED. STUD. 21, 23 (2006).

284. *Id.*

Treaty in Germany were, on the one hand, the requests for greater participation in the European process, while on the other, the demands for greater regional autonomy from Europeanization.²⁸⁵ The existing cleavages between the left and the right in Germany, reflected by the two main opposing parties, the Social-Democrats, and the Christian-Democrats, explains in part the regional differences in requesting either more EU partnership versus more autonomy from the EU.

Social-Democrat *Länder* such as North-Rhine-Westphalia tend to be more populated and wealthier per capita when compared with the less wealthy and more conservative *Länder*, such as Bavaria in the South.²⁸⁶ In describing the conflicting visions behind cohesion strategies in the EU, Chris Rumford has persuasively shown how two competing narratives pervade European development strategies: cohesion and autonomization.²⁸⁷ Rumford portrays the autonomization as a narrative with strong ties to neoliberalism that promote regionalism as a way to favor growth and less centralized state control.²⁸⁸ For instance, North-Rhine-Westphalia opposed the idea that the *Länder* should reject the entire Constitutional Treaty. This proposal was made by some *Länder* seeking to create an individual right for the regions to appeal to the ECJ directly in case of an infringement of the subsidiarity and proportionality principles by EU law.²⁸⁹ This proposal came from Bavaria, which often coalesces with Hesse and Baden-Württemberg.²⁹⁰ Conversely, from North-Rhine-Westphalia, three *Länder* are governed by Christian-Democrats that tend to be at the forefront in their demands for greater autonomy and self-governance.²⁹¹ Autonomy demands from the EU consist of enhancing local self-governance through subsidiarity and proportionality. These demands seek to restrict the internal market provisions enshrined in the EU treaty and reject soft law policies on tourism, education, and public health due to their encroachment on exclusive competences of the *Länder*.²⁹² Political ideology has played an important role in allying *Länder* in a spectrum of more partnership with or greater autonomy from the EU.

285. *Id.* at 29-30.

286. *Id.* at 32.

287. RUMFORD, *supra* note 212, at 68.

288. *Id.*

289. Bauer, *supra* note 283, at 32.

290. *Id.* at 30-31.

291. *Id.*

292. *Id.* at 28. As to the demands to reform the EU treaty, the *Länder* have proposed the abolition of article 308 that creates powers not expressly enumerated by the Treaty for the Community based on the unanimity voting.

As to the economic disparities among the *Länder*, these have not only triggered different behaviors towards Europe but they have also created problems of inter-*Länder* coordination vis-à-vis Brussels.²⁹³ In the context of cohesion policies, the cleavage between poor and wealthy *Länder* became more evident because the former sought to cooperate with Brussels to obtain structural funds, while the latter sought greater autonomy from Brussels's encroaching regulations.²⁹⁴ For instance, Bavaria and Saxony developed different attitudes towards the EU. As Charles Jeffrey pointed out, in 1998 the intranational heterogeneity of these two *Länder* vis-à-vis the cohesion policy promoted different behaviors. Whereby Bavaria is wealthy and very influential internally, Saxony is poorer and has a strong interest in capturing EU funding from Objective 1 of the structural funds.²⁹⁵

But cooperation with Brussels is at times unpredictable for the *Länder* and the alliance with the Commission does not always undermine the power of the central government. For instance, the allocation of structural funds in North-Rhine-Westphalia has increased the partnership between the *Länder* and the Commission but it did not necessarily undermine the authority of the central government.²⁹⁶ Rather, in Thomas Conzelmann's account, the imposition of restrictions on the part of the Commission through its competition and state aid policies became a huge burden for the *Länder* in implementing cohesion policies. Similar to the Sicilian case but with a less dramatic result, the partnership with the Commission entails benefits as well as constraints that can at times be even more severe than the one imposed by national governments.

Another important example of regional disparities as a source of intranational heterogeneity in Germany is the different political attitude between the Western and the five former Eastern *Länder*, the latter having created multilevel alliances with Brussels in the context of cohesion policies.²⁹⁷ As Jeffery Anderson explained, the unification of

293. See Charles Jeffery, *Farewell to the Third Level? The German Länder and the European Policy Process*, in *THE REGIONAL DIMENSION OF THE EUROPEAN UNION: TOWARDS A THIRD LEVEL EUROPE?*, *supra* note 3, at 57.

294. See Charlie Jeffery, *Sub-National Mobilization and European Integration: Does It Make Any Difference?*, 38 *J. COMMON MKT. STUD.* 1 (2000).

295. Charles Jeffrey, *Que gouvernement les régions d'Europe?: Échanges politiques et mobilisations régionales*, Sous la direction d'Emmanuel Négrier et Bernard Jouve 55 (1998).

296. See Thomas Conzelmann, *Networking and the Politics of EU Regional Policy: Lessons from North Rhine-Westphalia, Nord-Pas de Calais and North West England*, 5 *REGIONAL & FED. STUD.* 134, 174 (1995).

297. See Jeffrey J. Anderson, *Germany and the Structural Funds: Unification Leads to Bifurcation*, in *COHESION POLICY AND EUROPEAN INTEGRATION: BUILDING MULTI-LEVEL*

Germany in 1990 transformed the role of the country vis-à-vis Europe. The “spatial and territorial bifurcation” in the postunification situation transformed Germany into both a major contributor and also a receiver of structural funds from the EU.²⁹⁸ Not only the distribution of wealth between Eastern and Western *Länder* was different but more interestingly the decentralization in the former Eastern *Länder* resulted in a weak model without independent intraregional relations.²⁹⁹ Thus, European cohesion policies in the early 1990s did not create the interaction between the supranational and the subnational level that was hoped for, but it completely depended on the central government.³⁰⁰ However, things changed dramatically after 1994 when—after their intense lobbying before Bonn and Brussels—the former Eastern *Länder* were enlisted as major recipients of the structural funds similar to other peripheral European regions.³⁰¹ In this case, the new *Länder* were empowered through EU policies that allowed them to “escape the confines of federal policy regime.”³⁰²

Political ideological differences together with wealth disparities among *Länder* have played a key role in influencing the power struggles for attracting resources and political power in Germany that increasingly involve the EU. For instance, the weaker the *Länder* is because local elites do not control the federal government or because its economic situation is not flourishing, the more the partnership with the EU to receive structural funds becomes attractive. In contrast, stronger *Länder* that are more advantaged both from an economic as well as a political standpoint and are unlikely to receive structural funds have pushed for greater autonomy and independence from the EU.

3. Intralocal Heterogeneity: Greek Cities

Today Greece remains one of the more centralized or unitary states of the EU. Its prefectures and its municipalities have limited power and inadequate resources to engage in innovative metropolitan and urban

GOVERNANCE, *supra* note 151, at 164 (showing that the Eastern German *Länder* have used cohesion policies to undermine the power of their national governments).

298. *Id.*

299. *Id.* at 178 (“Thus the new Länder are unable to structure intraregional relations with complete independence. As such, territorial interactions within eastern Länder are not fully decoupled from national policies and politics, as they are in the old Länder.”).

300. *Id.* at 179.

301. *Id.* at 183-86.

302. *Id.* at 188 (explaining that thanks to the lobbying of the eastern *Länder* the federal criteria to allocate regional funding were now lifted at the discretion of each *Länder*). Even though many old *Länder* chose to keep the federal criteria established by the German government prior the unification. *Id.*

policies. While local authorities lack financial and administrative autonomy to implement fully EU cohesion policies, structural funds represent a crucial resource for the national economy. In the 1990s, national devolution reforms created thirteen Regional Administrations that “did not transform the centralized nature of the state and the institutional relationships between center and periphery.”³⁰³ Despite the reorganization of local authorities by merging the numerous municipalities and through the direct election of the prefectures, as second tier local authorities, decentralization of power was not successful. Currently, urban policies remain fundamentally centralized in Greece.³⁰⁴ Thus, EU cohesion policies have only partially contributed to decentralization. In reality decentralization reforms in Greece began significantly before the introduction of structural funds, as a sign of modernization of a country seeking to join the EU.³⁰⁵

The case of Greece is an interesting one because as a unitary state, EU cohesion policies could have triggered successful federal-local cooperation by empowering subnational governments and undermining the power of the central government.

The peripheral position of Greece vis-à-vis the EU has channeled Europeanization as a synonym for modernization for local elites through what scholars have called a hegemonic cultural imposition.³⁰⁶ Despite weak decentralization and the limited power of Greek subnational actors, EU policies have a different impact depending on the power and on the type of agency of each territorial actor. The most striking example of the heterogeneous impact of cohesion policies is the one among municipalities having to adjust to Europeanization. A brilliant study of three different Greek cities in the implementation of the Community Initiatives (CIs) launched by the Commission reveals such intralocal heterogeneity.³⁰⁷

CIs were introduced in 1989 as an additional EU cohesion policy measure attempting to target local and regional governments through flexible policy instruments. CIs referred to “specific problems of

303. See CHARALAMPOS KOUTALAKIS, *CITIES AND THE STRUCTURAL FUNDS: THE DOMESTIC IMPACT OF EU INITIATIVES FOR URBAN DEVELOPMENT* 23 (2003) (“The newly created regional administration are not elected but serve as decentralized structures of central government headed by central government appointees.”).

304. *Id.* at 61-63.

305. *Id.* at 24; Featherstone, *supra* note 198.

306. See Featherstone, *supra* note 198, at 25 (explaining that the EU impact on Greece can be seen through the lenses of Gramscian hegemony by “narrowing of the domestic agenda; the importation of previously alien policy philosophies; and the inculcation of a ‘disciplinary neo-liberalism’”).

307. See KOUTALAKIS, *supra* note 303, at 97.

regional restructuring” varying from topics such as industrial decline in specific sectors, addressing disadvantaged regions, targeting decline in the labor market through vocational training, technological innovation, developing tourism, or alternative energies.³⁰⁸ CIs concerned a very wide range of initiatives, including social, economic, and technological innovation but with the characteristic of “being implemented on a small scale.”³⁰⁹ In particular, projects such as “URBAN” or “EMPLOYMENT” aimed at addressing problems like urban decline, deterioration of living conditions, and unemployment arising in urban settings.³¹⁰ Scholars from the Southern European countries identified a Northern European bias in the policy objectives of these programs.³¹¹ For instance, the problems identified for industrial centers such as Amsterdam, Frankfurt, or Copenhagen were radically different from the ones arising in Greece, Southern Italy, or Portugal where homelessness is almost nonexistent due to family and land market structures. Thus, CIs often created mismatches in their implementation in Southern European countries.

In a study on the implementation of “URBAN” and “EMPLOYMENT,”³¹² Charlampos Koutalakis shows that domestic urban policies and the local administration tend to cooperate or collide with the European initiatives creating different pressures for adjustment in three different Greek cities.³¹³ In the case of Volos, a medium-size municipality of about 77,000 inhabitants in western Greece and the capital of the prefecture of Magnisia, CIs triggered a fruitful cooperation between municipal and supranational actors. Deindustrialization and increasing unemployment since the 1980s caused intraurban disparities in living conditions and increasing segregation among social groups in Volos.³¹⁴ “URBAN” and “EMPLOYMENT” aimed at restructuring local employment structures, upgrading urban planning intervention, and supporting social cohesion through the creation of child care centers,

308. See Tömmel, *supra* note 149, at 52-80.

309. *Id.* at 62.

310. Council Regulation 1260/1999 of 21 June 1999, Laying Down General Provisions of the Structural Funds, 1999 O.J. (L 161) 1 (EC); KOUTALAKIS, *supra* note 303, at 39-41 (showing that the budgetary reduction for the period 1994-1999 was €10.44 billion, which meant a reduction from 9% to 5.3%).

311. KOUTALAKIS, *supra* note 303, at 52 (showing how for poverty issues European CI and Greek urban policies tend to address very different problems).

312. The Urban program was established with Regulation OJ 180.2.94 of 15th of July 1994 laying down the relevant guidelines for URBAN; whereas EMPLOYMENT was established with Regulation OJ 200/13 of the 10th of July 1996, laying down the relevant guidelines for EMPLOYMENT. See KOUTALAKIS, *supra* note 303, at 44-52.

313. See *id.* at 97-98.

314. *Id.* at 138-39.

among other things.³¹⁵ Because of the limited number of actors interested in urban policies and the noncompetitive environment, Koutalakis demonstrates how in Volos the URBAN initiatives stimulated successful policy initiatives to implement the CIs by intralocal cooperation among municipalities.³¹⁶

In contrast to Volos, in Thessaloniki and Athens, the two biggest and more industrialized Greek cities, the CIs sought to target similar pockets of urban deprivations in peripheral suburbs with illegal construction and the absence of urban planning.³¹⁷ The difference between these two cities and Volos in the implementation of the CIs was the larger number of local actors involved because of the lack both in Athens and Thessaloniki of a single metropolitan government with urban competences.³¹⁸ Here local authorities are highly fragmented, involving a large number of local branches of the central government as well as nongovernmental organizations (NGOs) in managing urban policies together with municipal authorities.³¹⁹ This congested plethora of local, governmental, and private actors contributing to the implementation of CIs has triggered competition rather than cooperation, often undermining the scope of creating new structures for urban governance.³²⁰ However, in some cases, the Prefecture of Thessaloniki rather than the municipalities has successfully worked as an umbrella agency coordinating the various actors in the partnership with “employment” initiatives.³²¹

Overall, Koutalakis demonstrates how in highly fragmented municipal settings—with unequal distribution of resources and lack of structures for metropolitan governance both in Athens and in Thessaloniki—cities tend to collide rather than cooperate when having to adjust to the requests to receive the money through the CIs. The competitive attitude of local actors in attracting resources, by avoiding collaboration or hiding information, demonstrates the limits of the CI’s multilevel approach in mobilizing municipalities for urban policies.³²²

315. *Id.* at 162.

316. *Id.* at 175.

317. While Thessaloniki has an important harbor that connects Greece to the Balkans and is smaller than the capital, City of Athens, the capital concentrates cultural, administrative, and transport activities that connect the entire country as well the rest of Europe. *Id.* at 183. Both cities have about 750,000 inhabitants and they are the central cities in the regions of respectively Macedonia and Attica.

318. *Id.* at 196.

319. *Id.* at 198.

320. *Id.* at 253.

321. *Id.* at 254.

322. *Id.* at 255-57.

Part B has focused on the outcomes of EU structural funds in Germany, Greece, and Italy to show how these funds have had a different impact in each Member State. Rather than explaining these cases through a local autonomy perspective, the cooperation between the EU and the German *Länder*, the Italian regions, and the Greek cities are highly dependent on both state background rules as well as the diverse distribution of territorial and economic power among local actors. In each Member State there are stories of success (some *Länder*, some Greek cities) but also failure and backlash (Sicily, some *Länder*, some Greek cities). Thus, EU regional policies can generate new conflicts or new forms of centralization (Sicily, North-Rhine-Westphalia and Athens).³²³

IV. CONCLUSION

This Article offers a critique of two different ideas that characterize recent EU strategies to decentralize power. First, I show that the EU is “going local” by lumping together local governments into a “third level Europe” that does not differentiate among the diverse structures and levels of government that differ in each Member State. Second, decentralization through EU cohesion policy can either empower or disempower local actors vis-à-vis state, supranational and other local governments depending on the different Member States’ constitutional regimes characterizing the internal distribution of power as well as the territorial and socioeconomic disparities among subnational actors. Therefore, the outcomes of EU cohesion policies can often centralize power in Brussels or “recentralize” power in the Member States with negative results for the local development project. In response to current proposals by scholars committed to improving “input legitimacy” in European judicial and regulatory strategies on how to increase local autonomy, this Article offers a textured account of the effects of EU cohesion policy on subnational actors in Italy, Germany, and Greece. Rather than a plea for greater decentralization, EU cohesion policy should be better tailored to pursue the different development goals in each territory. The lesson learned from EU cohesion policy is one that should “travel” to other areas of EU regulation, such as environmental, internal market, and even financial regulation. With this lesson in mind, EU and national politicians ought to be more attuned to territorial and legal differences characterizing each Member State because these will determine the effects of EU-wide policies on particular territories.

323. See Davidson, *supra* note 150.