Detlef Seif MdB—Supplementary Written Evidence (VEU0018)

Question 1:

In principle, there is nothing objectionable about strengthening the role of national parliaments.

That said, a distinction must be made between the national and the European level, and between the rights and obligations which a national parliament has in relation to its own national government and the participatory opportunities for parliaments in relation to the EU institutions.

In Germany, the German Bundestag and the Bundesrat have far-reaching information and scrutiny rights in relation to the Federal Government. The foundation for this is Article 23 of the Basic Law, the German constitution. On matters concerning the European Union, both the German Bundestag and the Bundesrat have far-reaching rights, enshrined in national law, which go beyond the notification rights for national parliaments contained in Protocol 1 of the Lisbon Treaty. The Act on Cooperation between the Federal Government and the German Bundestag in Matters concerning the European Union sets out detailed notification rights, the right to the transmission of documents and related reporting obligations, and the right to deliver an opinion. In principle, the Federal Government is required to take opinions delivered by the Bundestag into account in its negotiations at European level.

The concept of "responsibility for integration" is anchored in the Act on the Exercise by the Bundestag and by the Bundesrat of their Responsibility for Integration in Matters concerning the European Union. This Act also provides for Parliament's participation in simplified and special treaty revision procedures.

The Federal Government and Germany's representative in the European Council are thus subject to clear stipulations regarding procedures and their voting behaviour. Special matters such as the provision of financial assistance are regulated by separate laws on parliamentary participation.

These rules mean that Parliament has a strong position in Germany, one which is probably unique in Europe in this form.

Strengthening a country's national parliament is thus an internal matter which each Member State must regulate for itself.

I take a different view of the question as to whether and in what form national parliaments should be strengthened in the European context.

The European Union's primary law has established firm rules on competences (exclusive EU competence, shared EU competence). In addition, the principle of conferral applies. I believe it would be detrimental to the efficient functioning of the EU institutions if national parliaments

could halt legislative procedures merely by citing an alleged infringement of the principle of subsidiarity.

The question of whether there is a genuine democratic deficit or simply the perception of one is open to debate. The European Union and its institutions are undeniably legal institutions *sui generis*.

While there may initially have been clear democratic deficits, as the power exercised by the European Union and the adoption of legislation was not directly or indirectly attributable to the will of the electorate, today the following points should be noted:

The European Commission is appointed by the European Parliament, and is thus the product of a democratic election across the entire European Union.

Where once the European Parliament only watched over the budget, it now plays an active role in the legislative process.

In the overall context, the mere fact that the Member States' representatives in the European Council or the Council are not elected directly by the people, but instead by Parliament – as is the case in Germany, for example (Germany is represented by the Federal Chancellor, who is elected by the Bundestag; the ministers are appointed by the Federal President on the Federal Chancellor's proposal) – does not mean that we can call them undemocratic structures, in my view.

Incidentally, it should be pointed out that the "red card" procedure now being envisaged, which would automatically lead to the discontinuation of a legislative procedure if 55% of the votes allocated to the national parliaments are mustered, is not a democratic procedure by any means.

Each national parliament has two votes, regardless of the size of the Member State. This leads to significant distortions. A total of 55% of the votes could potentially be mustered by countries which together represent just 27% of the European population.

As I already said at the House of Lords hearing, we should refrain from creating a procedure which directly or indirectly undermines the European Union's rules on competences and thus also devalues the European Parliament.

The essential issue is for the European Union to resolve to use its competence only in cases which urgently require European solutions. This is stipulated by Article 5 (3) of the Treaty on European Union, which states that in areas which do not fall within its exclusive competence, the EU shall only act if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at EU level.

The Juncker Commission made this one of its explicit aims on taking office, emphasising that it only intended to take action on important issues which definitely need to be regulated at European level. That said, we know from past experience that the European Union's

bureaucratic structure – its staff's "hunger for competences" – has led to the most minor issues being subjected to European regulation. There is no need to define the size, nature and manner of preparation of a margherita pizza, or to dictate the curvature of a banana or the size of a tomato, or to regulate at what angle a ladder must be placed against a wall, and so on and so forth.

It is important that the principles enshrined in Article 5 (3) TEU are made as concrete as possible. This is undoubtedly not an easy task, and poses a major challenge. It is one which is worth embracing, however, in order to keep the European Union free from nitpicking rules.

With regard to the subsidiarity objection, it is undoubtedly right to significantly extend the scrutiny period from the current 8-week limit to at least 12 weeks, so that the national parliaments can better scrutinise proposals.

Ultimately, though, there is no need to expand the subsidiarity objection or introduce a "red card" in order to safeguard the subsidiarity principle.

The legality of legislative acts can be reviewed in the framework of Article 263 TFEU, which requires an action brought by just one Member State. There is thus no need for such an action to be supported by several Member States. It is crucial, however, for the national parliament to have the right to demand that its own government bring an action for review of an act's legality and compliance with the subsidiarity principle.

Question 2:

The significance of "ever closer union", as enshrined in the preamble of the Treaty on European Union and in Article 1 para. 2 of the Treaty, does not legally prejudge the further development of the legal situation within the European Union.

Both the preamble and Article 1 para. 2 clearly refer to an ever closer union among the peoples of Europe. The earliest treaties did not contain this reference to "the peoples". It was incorporated into the treaty following concerns expressed by the UK's then Prime Minister, John Major, in the context of the negotiations on the Maastricht Treaty. The addition makes clear that this is not about closer integration in the legal sense. Instead, it indicates that what is meant is an understanding and a deepening of relations between the peoples of the Member States.

This is ultimately also shown by the context of the preamble, which states:
"…desiring to deepen the solidarity between their peoples while respecting their history, their culture and their traditions,
…resolved to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity,
…have decided to establish a European Union."

The "resolution" contained in the preamble to continue the process of creating an ever closer

union among the peoples of Europe has no binding legal effect.

The limits of European law are determined by the clear provisions on procedures and competences.

The principle of conferral is expressly enshrined in the treaty. The European Union therefore does not have the competence to create further competences outside of the treaty, as would be necessary to implement an "ever closer union in legal terms".

This is also the reason why the Court of Justice of the European Union has so far not referred to this clause in a single case, and will not do so in future either: it has no legal implications.

In other words, this is a purely political question, and one which could be regarded as a needless debate.

Question 3:

In principle, I can understand the United Kingdom's reflections which have ultimately led to President Tusk's proposal that an emergency brake be introduced. That said, it remains to be established whether there are such significant distortions that this will lead to the activation of the "emergency brake", as provided for by President Tusk in the draft declaration of the European Council and the European Commission.

The first step would instead be to demonstrate and establish whether the in-work benefits claimed by "EU migrants" are actually resulting in significant distortions, or whether the issue is in fact the in-work benefits provided to migrants who have come to the UK from the Commonwealth or other non-EU countries.

In my view, we should go beyond an emergency brake and address the areas in which a movement of migrants within the EU is causing or could cause social distortions. As I said during the House of Lords hearing, rather than concentrating solely on financial burdens for one Member State, this should also look at the problem of the emigration of qualified and educated people from other Member States (brain drain).

Both this aspect and the fact that, as discussed in response to question 1, the subsidiarity principle should be designed and defined in a more concrete manner in EU primary law justify a partial "opening of the treaties". It is essential in this context to ensure that individual countries do not use an opening of the treaties to engage in "cherry picking" and to seek to anchor national considerations and interests in primary law. The EU has already been very accommodative in many cases with special arrangements, opt-ins and opt-outs.

If individual Member States' special interests go too far, it not only weakens the European Union, but endangers the European project as a whole. President Tusk's proposal alone cannot strike a lasting and positive balance.

Question 4:

The British Prime Minister's remarks on a "clear long-term commitment to write competitiveness into the DNA of the whole European Union" sound energetic and engaged. When it comes to implementation, however, the devil is in the detail.

However, I share the fundamental belief that prosperity and positive economic, but also social, developments within Europe depend on the existence of rules to secure competitiveness.

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