

Presentation: Twenty years of representation of territorial governments in the EU

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In this monographic issue of *Tempo Exterior* several EU practitioners with more than 20 years of experience in the representation of territorial interests towards and in the European institutions and the community decision-making process provide their personal perspective on their practice. Although there has been extensive academic literature on so-called territorial mobilization since the 1980s (e.g. Tatham & Thau, 2014; Marks, Haesly & Mbaye, 2010), the testimonies of the actors themselves involved in this type of representation and intermediation of interests have been less common in academic journals.

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In May 2022 the work of the Conference for the Future of Europe was completed, which took the wake of the 2001-2003 Convention on the Future of Europe, which after a tortuous process of two negative referendums in France and the Netherlands took place for almost a decade. then to the current Lisbon Treaty. Several of the authors of this special issue took part as advisers to the politicians who participated in that process.

One of the most sensitive aspects of that Convention was the treatment of the territorial question and the principle of subsidiarity, which produced what we know today as Article 5(3) of the Treaty on European Union on the principle of subsidiarity, the EU's duty to protect local self-government and regional cohesion as well as the need to involve territorial legislators in overseeing the principle of subsidiarity, via state legislatures but also by the Committee of the Regions (CoR), an advisory body which had already been introduced by the Maastricht Treaty 1992 and launched in 1994. Maastricht also allowed the so-called regional ministers to represent their Member State in the formations of the EU Council in accordance with their competences.

We now have a broad enough perspective to assess the expectations and realities of territorial representation in the EU. Certainly, these are not the times when the paradigm of "Europe of the Regions" had a certain prevalence as a kind of evocation of an EU as a post-national legal-political entity governed by the paradigm of multilevel governance, which, regardless of its multiple conceptions (Stephenson, 2013), basically seeks to articulate in the most coordinated and consensual way possible - what has been known since 2018 as "active subsidiarity" - the solution to problems shared by the sub-central, state and community levels (Moodie, Salenius, & Meijer, 2022; Pazos-Vidal, 2019a).

While the EU has greatly expanded its scope, the same cannot be said of the EU's territorial dimension. The Great Recession of 2008 led to a major expansion of EU-wide supervisory capacity of what were previously conceived as domestic public policies in areas such as pensions or utilities: the so-called Fiscal Treaties and the expansion of the so-called European Semester.

The crisis of COVID-19 has led to the expansion of the EU's previously residual competences in health, as well as the transfer of the Rubicon which means starting to finance the European budget (*Next Generation EU*, with 750 billion Euros the largest investment fund in the EU in history, doubling the Regional Policy and the Common Agricultural Policy) through the joint issuance of European public debt (Bachtler, Mendez, & Wishlade, 2020).

The so-called *rule of law backsliding crisis* is leading to a strengthening of the capacity of the EU institutions to penalize those Member States (and consequently their territorial entities) that are violating the principles of the Treaties (cf. .Bárd & Grabowska-Moro, 2020) , in a rather activist perspective. This activism and expansion of the scope of interpretation of the Treaties is also present in the EU Court Justice and which continues to be questioned not only by certain governments but also by constitutional courts such as the German one (Pazos-Vidal, 2020).

However, despite this expansion of the scope of European decisions to the domestic sphere of Member States (or rather they having greater visibility, as the weight of EU legislation and Commission oversight greatly has long weighted into the provision of public services and even their organization by way of EU legislation on public procurement, state aid or the environmental) does not correspond to a greater presence of sub-state institutions in European decision-making processes. Tellingly, the conclusions of the Conference, simply note the importance of the territorial dimension (Conference on the Future of Europe, 2022: 84).

So what happened? Several things. First, the so-called “Europe of the Regions” was a mirage in which many territorial actors deluded themselves into believing that they were shaping a qualitative leap in the nature of the EU (Bourne, 2006). At the territorial level, what has happened at most is a certain accommodation of territorial demands within the existing institutional and legal framework: the best example is the Committee of the Regions, which more than a chamber representing the different territorial interests, has resulted in creation of a new pan - European body that levels down different interests- (Piattoni & Schönlaui, 2015). This levelling harms the so-called Regions with Legislative Powers such as Galicia or the German Länder so active in the Convention of 20 years ago but which is in its very *hyperconsensual* nature, as Simon Hix (1999) would say, of the European integration process. It is nothing new: as early as 1986 the declaration on regionalism in Europe of the Assembly of European Regions (a voluntary association of territories that proliferated so much in the 80s and 90s with a very active presence of territorial leaders from Bavaria to Catalonia) defines the region as any entity immediately below the state level, putting in the same bag Danish counties and government with almost fiscal sovereignty as the Basque Country mixing as Le Galès (1998) would say, the notion of region-*subject* (endowed with its own collective identity and/or political personality) and region-*object* (territory defined for statistical purposes, to be managed from upper tiers of government). A conception that even before the CDR it was already at play in EU Regional Policy, traditionally the largest territorial development policy in the world, the real engine of European territorial mobilization and a privileged test ground for European multilevel governance (Marks, 1992).

This political disappointment coincided with the beginning of the 2008 crisis, so territorial leaders mostly withdrew to the domestic sphere due to lack of visibility and resources. In this respect, it is no exaggeration to say that many territorial leaders (Fraga, Maragall, Marini, Schausberger, etc.) sought an expression of genuine Europeanism and to safeguard the acceleration of the process of transferring powers, many of them sub-state, to the EU. At the same time they were also looking at the European level (and, through "Europe", to influence the domestic level). When the limits of this approach became clear, most of them and their successors stopped spending large political capital on the European theatre of operations. Many territorial actors began to stop going to Brussels to vent what were, in reality, domestic governance issues at the domestic level. A paradigmatic case was the German *Länder* , which after decades of asking “let us in” passed with the turn of the Millennium to the position of “don’t bother us” (Jeffery, 2005). In the meantime, they had reached an internal German agreement between the federation and the *Länder* to define Germany's common position on strategic EU issues.

This accommodation has occurred to a greater or lesser extent in the rest of Member States extensive decentralization. In some cases it was already standard practice, as in Scandinavia, the Benelux consociative democracies or in Austria's federalism there were already mechanisms of internal coordination and formulation of national domestic policies. They have progressively spilled over towards EU decision-making: this special issue contains an analysis of the Code of Administrative Relations of the Netherlands, by Bas van der Barg, as well as the constitutionally protected consultation mechanism that exists in Austria, by Simona Wolesa.

For reasons of space, it has not been possible to incorporate the Italian experience of the *Conferenza Stato Regioni* (Carpani, 2006), which, despite what we usually think of complicated Italian politics, is a great example for other complex states like Spain that are not yet able to solve the European dimension of its territorial governance (Pazos-Vidal, 2019b). Indeed Spain has been the Member State that has been least able to fully address this issue, due to its limited interterritorial and vertical collaboration (Colino, 2020) and for the perennial territorial issue, perhaps exacerbated by the so-called Catalan *procés* (cf. Cardenal, 2020).

However this diminished territorial interests participation in EU policymaking from Spanish Autonomous Communities is also due to factors of political opportunity: just look at the unedifying and very public discussion on the distribution of funds, sometimes as in the Conference of Presidents in October 2020 in the presence of the President of the European Commission, and not to face structural challenges but fundamentally to maximize the most discretionary European income catchments possible (Pazos-Vidal, 2021; Casula & Pazos-Vidal, 2021).

However, despite that the involvement of sub-state institutions in the European decision-making process long been not as politically exciting as it might have once been imagined it could become, but it still exists. A whole generation of *practitioners* of which the authors of this monograph are part of, have devoted their academic training and subsequent professional development over the last two and even three decades to the representation of territorial interests in Brussels. The work of many of them is in the shadow of politicians, so the editor of this issue wants to testify personal gratitude to the authors of the different articles, putting aside the traditional reservation and analyse the practice of representing territorial interests in the EU, in their own words .

Obviously, the interest of the testimonies collected in this special issue is not only about what they say, but also for what they highlight and what they do not let alone what they do not say. Hopefully, this will offer novel material that can be the subject of further work of academic literature in this field. Reading the different contributions of this monograph there are certain keys that are worth summarising and contextualising in this introductory article.

The EU is not just about big decisions, much less the speeches, events, meetings and press releases that the coming and going territorial politician sends from Brussels, for domestic consumption. This is obviously a good part of the work of the authors of this issue and the rest of the various territorial representatives in Brussels. It is in fact the least relevant part of their work, compared to the the work that happens when their political masters are not in Brussels. Regional/Local politicians have, at best, limited time and mental space to devote to what may look like, seen from their areas of origin, as the parallel universe of Brussels. The first and most basic of these activities is the analysis of EU proposals and the decision-making process. Pre-internet, Brussels offices could spend much of the day faxing the Official Journal or browser quite expensive privately compiled EU staff directories to find a relevant contact. Obviously in the internet era, none of this is necessary, as the EU institutions are by far the most transparent and accessible Europe-wide.

Many of the offices that focused only on these basic tasks have obviously suffered over time or been repurposed towards seeking new sources and partners of EU funding beyond the

traditional Cohesion Funds, obviously on top of the pre-existing support to the comings and goings to Brussels of their political masters, be that for ad hoc meetings and more commonly support at Committee of the Regions meetings.

However, the qualitative leap for these offices is achieved if and when they become a true *knowledge center* on European issues of the territorial government they represent, something particularly important because except for specific policies, and many departments only have sporadic contact on European standards (Rodriguez-Pose & Julie Courty, 2018). In the medium term, leaving aside path dependency so common to most bureaucracies, the survival of these Brussels offices ultimately depends on a bifrontal strategy of *deepening* (acquisition of knowledge and contacts valued by the administration of origin) and *diversifying*, including in many cases the intermediation of EU funded projects and of political communication. A good example is the article by Marta Marin, Director of the Delegation of the Basque Country to the EU, one of the first and always the model among the Spanish Autonomous Communities of fully institutionalised EU representation. In her article, we see that without losing sight of the demands of the regions with legislative powers just as 20 years ago (the new RLEG initiative depends on the pilotage of the Basque Country, given the lesser ambition of many territories, such as Galicia, which did participate actively in the REGLEG group two years ago decades) there is now also a great focus in supporting Basque entities as much as possible innovative EU collaborative project (Hunter, Patazi & Petit, 2021).

The second is the association not only at the level of offices in the same Member State - sometimes enjoying much better relations between them than what is the case between the respective political leaders - but also in the articulation of interests through expert groups and associations. Michael Schmitz's testimony in this special issue, talking about the EU transparency register, where his organisation and others were able to oppose the Commission's attempt to force mayors and their employees to register as lobbyists is a (rare) example of successful territorial mobilization. It is also quite expressive of the need, in order to have influence in the EU, to be able to stay focused for a long time. This article is also symptomatic of the change in the EU institutions' position on territories: although in the 1980s and 1990s it was predicted that the Commission would use subnational authorities to *bypass* central governments. However it now has a more pragmatic approach to subnational demands, for they ask for a lot (influence EU funds) but are perceived to deliver too little (for instance on enforcement of EU Competition Law or environmental standards). Also because the Commission now sees itself as "more political", to borrow the words of Jean Claude Juncker, so it needs the goodwill of the Member States to achieve even greater Europeanisation of public policies. At the same time, the Commission cannot grow indefinitely and, to avoid decision overload, for more than a decade has taken a more strategic and decentralized approach, with less *micromanagement* that in the past on issues such as state aid or EU fund management (Bachtler & Mendez, 2007).

As mentioned, the sub-state authorities have taken a step back from Europe, at least from the political frontline, but the EU does not forget about them. In fact, the opportunities to actively participate in the design of European policies are greater and more predictable now. The so-called *Better Regulation* is the mechanism by which EU legislative proposals have to go through to make sure of possible impacts: there is every system of prior consultation, and the 2021 guidelines include not only an analysis of subsidiarity as well as the assessment of territorial impact in general, rural (*rural proofing*) and even urban (Pact of Amsterdam) (cf. Medeiros, 2019). Regional authorities can also participate in the "Fit-For-Future" Platform. The problem is that this is a technical work that gives little visibility to the political decision-maker. Therefore in most cases, unless there is a clear political or institutional will to participate in these processes, these opportunities are either left unused or reduced to a cut and paste exercise.

European Law and Politics are a bit of a parallel reality. In many meetings of, for example, in the Expert Group on Public Services of the Council of Municipalities and Regions of Europe (CEMR), a voluntary association that has been bringing together national associations of municipalities since long before the creation of the EU, Germans and Austrians (among them the two authors of this special issue) have an active participation and extensive technical knowledge. By contrast their southern European counterparts are not even present. Other national organisations, such as the Spanish Federation of Municipalities and Provinces (FEMP), do not even have offices in Brussels or staff dedicated to monitoring these policies. Does this mean that these countries live in splendid ignorance? Not necessarily. Simply put, unlike Central and Northern Europe, they have a very hierarchical notion of EU law, so they only intervene when the line ministry calls them to discuss the transposition of a given Directive (for example, Public Procurement). This happens literally years after that was approved at EU level and where there is little to do if it does not fit the reality and needs of Spanish territories. Subnational participation in the upstream phase of European policymaking is necessary but contingent.

The national political culture is therefore a fundamental factor. In general, sub-state authorities with a political leaders enjoying a high level of discretionality over a bureaucracy that is run under Administrative Law procedures, have a huge handicap. Their officers are hostage to the vertical of political power and a very narrow and passive view of the European legislative process. Its Brussels offices have little room for manoeuvre without consulting the corresponding capital. This provides a contrast to their counterparts representing northern European territories, where there is a clearer division between the public servant (there are no lifetime officials as understood in the countries based in the French model) and the political level, with a more restrictive role of the latter (Dahlström & Lapuente, 2017). Their Brussels representatives have more room to influence the European decision-making process. In this sense, and contrary to what we consider in the Spanish context, that a territory has legislative powers or not, it is not very relevant: the cases of the Netherlands described in the article by Bas van de Barg or Austria by Simona Wolesa, not to mention the Scandinavians and, in their time, British local governments, provide ample evidence that the amount of powers conferred to substate government is not at all directly proportional to the ability to influence EU decisions.

That being said, the challenge that most Brussels offices do have in common is their fit within the administrations back home: if they are in a horizontal department dependent on the political level, they have a greater margin to not only represent the interests of that territory in Brussels but actively influence the definition the position of the territory on that given issue. On the contrary, if they are in a specialized unit not to mention dependent on a specific sector department, offices have a high risk of becoming a catch-all department where all “International” matters that different departments cannot or they don not want to deal with, end up being forwarded to. They have a clearer but much more uncertain role as they exist in a limbo between Brussels and the administration of origin. However, this problem is not only exclusive to territorial governments, the same dilemma exists in the treatment of EU matters policy within central governments.

Finally, what the practice of recent decades has amply demonstrated is that any aim to unilaterally influence EU decisions, unless it is in something very specific and localized, is doomed to fail (Beyers & Donas, 2014). Even when German subnational governments are pushing for it. The articles by Michael Schmitz and Simona Wolesa are quite clear in this regard. To be successful, European territorial mobilization must either joined-up or it will not take place.

In this sense, territorial mobilization takes place, either as a voluntary association (working groups and structures between the offices of the same Member State, issue networks or pan-European associations) or institutionally, namely via the Committee of the Regions.

In the first case, its limitation lies in the members' own voluntarism. Pan-European associations are also a double-edged sword, because more than mere mechanisms of intermediation and agglutination of diverse territorial interests, they have progressively become dependent on the European institutions, which gives them (their secretariat) privileged access and increasingly finances its own internal operations. Therefore, the risk of what is known in public policy as a "principal-agent problem" is significant.

The case of the Committee of the Regions it risks of levelling-down territorial representation, but this must be cross-examined with the opportunities it provides for its status within the EU institutional framework. Thomas Wobben's article is paradigmatic of this. While on the one hand the CoR seeks to assert itself as the main interlocutor and agglutinator of territorial interests (see the example of the Cohesion Alliance) on the other, as shown in full detail in the article, CoR is able to influence, much more than the European Parliament would like to admit, the negotiating processes of EU policies having a clear territorial dimension such as EU Regional Policy. This detailed article strongly answers the question then asked by Warleigh (1997) whether CoR is an unimportant committee.

Europe, ultimately, is about people. The representation of territorial interests too. Beyond the political headlines, the daily work, discreet and intense, of many colleagues like those who were kind enough to contribute to this special issue of *Tempos Novos* is what the European Union to the territories, and viceversa.

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