

SUB-STATE ENTITIES IN EU LAW: CHANGES AND CHALLENGES¹

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1. In a “post-state” era, sub-state political communities face new challenges. Modern constitutionalism resorted to various political and territorial forms to ensure the autonomy of certain social communities; in many cases, uniting different nations under the same State. But the integration of States into transnational political communities had profound implications on the sub-state levels of government. In the European context, it is now widely recognized that the process of integration unleashed centripetal forces.

This article revisits the effects of European integration in the internal distribution of powers and examines the novelties introduced by the Lisbon Treaty regarding the position, the powers, and the rights of sub-state communities in EU Law.

2. European integration impacted on the political organization of the Member States both horizontally and vertically.

It should however be noted that the design of the internal structure of powers varies considerably in the Constitutions of the Member States of the Union and therefore the effects of the European integration on the internal separation of powers are also very different. Nonetheless, it is possible to lay out some grand lines.

The impact of the European integration on the horizontal separation of power, i.e. the balance between the legislative, executive and judicial branches, has been explained in some detail in the literature. Doctrinal

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¹ Algumas ideias desenvolvidas no trabalho que agora se publica foram já expostas na Comunicação apresentada na CGS Final Interdisciplinary Conference, Nation and Society, realizada em Toruń [Polónia], 2018.

studies on Constitutional Law and Political Science have analysed this issue in great depth, bringing to light a general tendency: on the one hand, the strengthening of the executive in relation to the legislative power; on the other hand, the empowerment of the judiciary.

3. At a vertical level, the relationship between the central state and infra-state entities – federated states, autonomous regions – also underwent transformations due to the European integration process, which led to the accentuation of centralizing tendencies.

It is not hard to see why the integration process triggered these centripetal forces. It is well known that the conferral of powers on the Union has resulted in a limitation of the Member State powers and, to a degree varying with the terms of the internal distribution of powers, has also invaded the powers of the sub-state entities, at both the legislative and the executive levels.

However, in the institutional design of the Union, these communities are represented only in the Committee of the Regions, which is an advisory body, vested only with consultative powers². The prominent position in the legislative process is attributed to the Council, a body which is composed of one representative from each Member State at ministerial level. Efforts have been made, in the successive revisions of the Treaties, to defend representative democracy, and this resulted in a growing extension of the powers of the European Parliament, and, more recently, in the reform agreed in Lisbon Treaty, in the involvement of national parliaments in the legislative process of the Union³. But

² The Committee of the Regions was established by the Maastricht Treaty. It is one of the EU Advisory Bodies. According to Article 13 [4] TEU: "The European Parliament, the Council and the Commission shall be assisted by an Economic and Social Committee and a Committee of the Regions acting in an advisory capacity."

The obligation to consult the Committee of the Regions is established in several areas: Transport: Article 91TFUE; employment: Article 148 TFUE; social policy: Article 153 TFUE; the European Social Fund: Article 164 TFUE; Education, vocational training, youth and sport: Article 166 TFUE; culture: Article 167 TFUE; public health: Article 168 TFUE; trans-european networks: Article 172 TFUE; environment: Article 192 TFUE; energy: Article 194 TFUE.

³ See, generally, Article 12 TUE and the Protocol on the Role of National Parliaments in the European Union. As regards the involvement of national parliaments in monitoring compliance with the principle of subsidiarity, see Article 5 [3] TUE, Article 352 [2] TFUE and the Protocol

the Council continues to occupy the prominent position in the Union's legislative process. This means that the conferral of powers on the Union involves the central governments being given power over matters which, in some constitutional systems, belonged to the sphere of intervention of sub-state communities. Also, the continuous enlargement of sphere of competence of the European Union, and the changes that have taken place in the European governance model, with the development of a composite administration, had severe implications for the executive prerogatives of sub-state entities.

What is more, the appointment of representatives to the Committee of the Regions remains in the hands of the Council and the Member States⁴. As HOPKINS notes, "in most cases, representatives came from local and regional levels with some purely national appointees"⁵; only strong regions, *de iure* or *de facto*, have been capable of ensuring their presence on the Committee.

4. In legal literature, the response to the loss of powers of infra-state entities due to the evolution of the integration process follows two main lines.

Some authors take the view that the problem should be addressed at national level. It is submitted that it is for the Member States' legal systems to ensure the effective participation of these communities in EU

on the application of the principles of subsidiarity and proportionality annexed to the Treaty of Lisbon.

⁴ Article 305 TFUE reads as follows:

"The number of members of the Committee of the Regions shall not exceed 350.

The Council, acting unanimously on a proposal from the Commission, shall adopt a decision determining the Committee's composition.

The members of the Committee and an equal number of alternate members shall be appointed for five years. Their term of office shall be renewable. The Council shall adopt the list of members and alternate members drawn up in accordance with the proposals made by each Member State. When the mandate referred to in Article 300(3) on the basis of which they were proposed comes to an end, the term of office of members of the Committee shall terminate automatically and they shall then be replaced for the remainder of the said term of office in accordance with the same procedure. No member of the Committee shall at the same time be a Member of the European Parliament."

⁵ HOPKINS, W. John – *A Tale of Two Europes: European Regions from Berlin to Lisbon*. Australian and New Zealand Journal of European Studies, 2010, 55 et. seq., at 60.

affairs; i.e. in the elaboration of the government's position on Union affairs or in the national implementation of Union law.

In the debate that accompanied the last revision of the treaties, DÍEZ-HOCHLEITNER argued that the time had not yet come to "introduce the regional dimension into the competencial system of the Union"⁶.

In L. PIRES' opinion, a «structural congruence» is needed between the constitutional developments of the Member States and the EU⁷. And indeed some legal systems (for example: the German, the Italian, the Spanish and the Portuguese) already recognize infra-state entities participation rights in matters of European policy: the right to be heard; the right to information; the right of initiative⁸. Some legal systems also ensure the representation of infra-state entities in the national delegations involved in the European decision-making process.

Other scholars, while recognizing that it is the responsibility of the Member States to ensure the effective participation of these entities in drawing up government positions in EU affairs or in the national implementation of Union law, argue that relying on the domestic political systems is insufficient and call for a greater protection of infra-state entities by European Union law. In other words, these authors consider that infra-state entities must be granted the adequate instruments to voice their demands and defend their interests at EU level.

Supporting this view, in the course of the preparatory work leading to the last revision of the Treaties, CONSTANTINESCO wrote: "one wonders if it would not be appropriate to mention in the Treaty, that these entities exercise powers that the subsidiarity principle is intended to protect and if it should not then be established that those entities may bring

⁶ Vide DÍEZ-HOCHLEITNER, Javier – *El futuro del sistema competencial comunitario: algunas propuestas de reforma*, in GARCÍA DE ENTERRÍA, Eduardo (Dir.) – *La encrucijada constitucional de la Unión Europea*. Madrid: Civitas, 2002, 85 et seq., at 102 and 108.

⁷ Vide PIRES, Francisco Lucas – *Prefácio: A caminho de uma Constituição Política Europeia?*, in LUSTER, Rudolf – *União Europeia Um Projecto de Constituição*. Sindelfingen: Editora Libertas, 1989, 9 et seq. at 21-22.

⁸ Vide HUBER, Peter M. – *Estatalidad abierta: Un análisis comparado*, in BOGDANDY, Armin von; CRUZ VILLALÓN, Pedro e HUBER, Peter M. (eds.) – *El Derecho Constitucional en el espacio jurídico europeo*. Valência: Tirant lo Blanch, 2013, 69 et seq., at 106; regarding the portuguese system, see: MARTINS, Ana Maria – *A Participação as Regiões Autónomas nos Assuntos da República*. Coimbra: Almedina, 2002.

an action for annulment of a Community measure before the Court of Justice if it infringes their own prerogatives, as recognized by the national constitution?”⁹

In the same vein, the Committee of the Regions put forward several proposals to amend the text of the treaties as regards the jurisdiction of the Court of Justice, relaxing the standing requirements both for itself and for sub-state entities with legislative powers¹⁰.

5. In the Treaty of Lisbon we find traces of these last positions. The new formulation of the principle of subsidiarity makes a reference to the “regional and local level”. Article 5 (3) TEU states:

“Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, 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 level or at *regional and local level*, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.”

The Protocol on the application of subsidiarity and proportionality also makes a reference to the “regional and local dimension”. For the first time, EU primary law ensures the consultation of sub-state entities in the development of EU law. Pursuant to Article 2:

“Before proposing legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the *regional and local dimension* of the action envisaged. In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for its decision in its proposal.”¹¹

⁹ Vide CONSTANTINESCO, Vlad – *Brève note sur répartition des compétences comme clé de la future constitution européenne ?*, in *Mélanges en hommage à Guy Isaac*, Tome 1. Toulouse : Presses de l’Université des sciences sociales de Toulouse, 2004, 155 et seq., at 161.

¹⁰ See, for example: Opinion of the Committee of the Regions on the revision of the Treaty of the European Union and the Treaty establishing the European Community CdR 136/95, OJ 1996 C 100, p. 1; Resolution of the Committee of the Regions on the next Intergovernmental Conference (IGC), CdR 54/99 FIN, OJ 1999 C 293, p. 74.

¹¹ Protocol 2, Article 2, emphasis added.

Without diminishing the importance of these developments, one should remember, as HOPKINS rightfully notes, that “the subsidiarity gains of the Lisbon/Convention process are only potential gains and everything will depend upon how they are applied in practice”¹².

6. More significantly, the Treaty of Lisbon did not go as far as some scholars and the Committee of the Regions had proposed regarding infra-state entities direct access to the Court of Justice to ensure that the principle of subsidiarity is upheld; i.e. to control if the objectives of the Union’s proposed action would not be better ensured at regional and local level.

As is well known, unrestricted access to the Court of Justice of the European Union for judicial review of Union acts is guaranteed only for the so-called privileged applicants, listed in Article 263 TFUE, second paragraph: the Member States, the European Parliament, the Council and the Commission. Natural and legal persons enjoy a more restricted right to bring proceedings that needs to satisfy the conditions laid down in the fourth paragraph of Article 263 TFUE.

The issue of individuals’ access to the Court of Justice of the European Union under Article 263 TFUE has been the object of an intense academic debate¹³, and, in the past, different interpretative positions were developed by the Court of Justice and the Court of First Instance

¹² Vide HOPKINS, W. John – *A Tale of Two Europes: European Regions from Berlin to Lisbon*. Australian and New Zealand Journal of European Studies, 2010, 55 et. seq., at 67.

¹³ For a more thorough treatment and further references, see MARTINS, Patrícia Fragoso – *Rethinking Access by Private Parties to the Court of Justice of the European Union. Judicial Review of EU Acts before and after the Lisbon Treaty*. Lisboa: Universidade Católica portuguesa, 2016; PAIS, Sofia Oliveira – *A protecção dos particulares no âmbito do recurso de anulação depois de Lisboa: Breves reflexões, in Estudos de Direito da União Europeia*. Coimbra: Almedina, 2012, 95 et seq.

Specifically on the *locus standi* of sub-state entities in EU Law, see THIES, Anne – *The Locus Standi of the Regions before EU Courts*, in PANARA e BECKER (eds.) – *The Role of the Regions in EU Governance*. Berlin: Springer, 2011, 25 et seq; VAN NUFFEL, Piet – *What’s in a Member State? Central and Decentralized Authorities before the Community Courts*. Common Market Law Review, 2001, 871 et seq; ZAMPINI, Florence – *A propos du droit au juge d’une entité infra-étatique, de la responsabilité de l’État et de la coopération loyale ...*, in *Mélange en hommage à Guy Isaac, 50 ans de droit communautaire*, Tome 2. Toulouse: Presses de l’Université des Sciences Sociales, 2004, 655 et seq.

(now General Court)¹⁴, which ended in the Court of Justice statement that the principle of effective judicial protection cannot have the effect of setting aside the conditions laid down in the fourth paragraph of Article 263 TFUE¹⁵. Finally, the Lisbon Treaty amended the text of the treaties as regards individuals' standing to bring actions for annulment. Pursuant the new text of Article 263 TFUE, fourth paragraph:

“Any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.”

As before, non-privileged applicants may challenge EU acts not addressed to them only if they demonstrate that they are directly and individually concerned by the measure which they are seeking to have annulled. But in addition to that, this newly draft provision gives individuals the right to challenge regulatory acts of direct

¹⁴ See the more flexible approach adopted by the Court of First Instance in *Jégo-Quéré* and the response of the Court of Justice, in appeal, reaffirming the *Plaumann* ruling.

The Court of First Instance affirmed:

“(…) in order to ensure effective judicial protection for individuals, a natural or legal person is to be regarded as individually concerned by a Community measure of general application that concerns him directly if the measure in question affects his legal position, in a manner which is both definite and immediate, by restricting his rights or by imposing obligations on him”.

Judgment of the Court of First Instance of 3 May 2002, *Jégo-Quéré & Cie SA v Commission of the European Communities*, Case T-177/01, ECR 2002 II-2365, para. 51; Judgment of the Court of 1 April 2004, *Commission of the European Communities v Jégo-Quéré & Cie SA*, Case C-263/02 P, ECR 2004 I-3425, para. 45.

See also the critical opinions of some of the Advocate Generals': opinion of Advocate General MAYRAS delivered on 27 June 1973, *Merkur v. Commission of the European Communities*, Case 43/72, ECR 1973 -1055; opinion of Advocate General RUIZ-JARABO COLOMER delivered on 12 September 1996, Case C-142/95 P, ECR 1996 I-6669; opinion of Advocate General JACOBS delivered on 21 March 2002, *Unión de Pequeños Agricultores v Council of the European Union*, Case C-50/00 P and on 10 July 2003, *Commission of the European Communities v Jégo-Quéré & Cie SA*, Case C-263/02 P, ECR 2004 I-3425.

¹⁵ See, Judgment of the Court (Sixth Chamber) of 1 April 2004, *Commission of the European Communities v Jégo-Quéré & Cie SA*, Case C-263/02 P, ECR 2004 I-3425, para. 36; Judgment of the Court of 25 July 2002, *Unión de Pequeños Agricultores v Council of the European Union*, Case C-50/00 P, ECR 2002 I-6677, para. 44.

concern to them which do not require implementing measures¹⁶, abandoning in these cases the requirement of individual concern. A textual reading of the provision already indicates that the Lisbon reform maintained the restrictive approach in relation to the right of action of individuals, and, as a result, some gaps of protection still persist. As MARTINS rightfully noted: “although Article 263 (4) TFUE has reduced the possibilities of gaps of judicial protection in the EU, it has not eliminated all of them”¹⁷.

7. The question arises then: do infra-state entities enjoy the same legal standing of Member States, as privileged applicants? Do they enjoy the same general right of access to the Court to defend the interests of its territory? Or must they be treated as individual applicants, being able to challenge the measures they consider detrimental to their interests only in the narrow limits in which individual applicants can do so?

According to settled jurisprudence of the Court of Justice, the term “Member State” within the meaning of the second paragraph of Article 263 TFEU refers only to “the governmental authorities of the Member States”¹⁸. Following the Court’s explanation, that term can

¹⁶ According to the case-law of the Court of Justice, the meaning of ‘regulatory act’ for the purposes of the fourth paragraph of Article 263 TFEU must be understood as covering “all acts of general application apart from legislative acts” [See Order of the General Court of 6 September 2011, *Inuit Tapiriit Kanatami and Others v European Parliament and Council of the European Union*, Case T-18/10, ECR 2011 II-5599, confirmed by Judgment of the Court, 3 October 2013, *Inuit Tapiriit Kanatami and Others v European Parliament and Council of the European Union*, Case C-583/11 P, Digital reports, para. 58].

For a broad interpretation of Article 263 (4) TFUE, in the light of the principle of effective judicial protection, see MARTINS, Patricia Fragoso – *Rethinking Access by Private Parties to the Court of Justice of the European Union. Judicial Review of EU Acts before and after the Lisbon Treaty*, op. cit, at p. 495.

In the author’s view: “the term «regulatory acts» included in Article 263 (4) TFUE should be deemed to include all Union measures which are adopted under the form of regulation or which perform some sort of regulatory function regardless of their form and of the procedure for their adoption”.

¹⁷ *Idem*, p. 476.

¹⁸ See: Order of the Court of 21 March 1997, *Région wallonne v Commission of the European Communities*, Case C-95/97, ECR 1997 I-1787; Order of the Court of 1 October 1997, *Regione Toscana v Commission of the European Communities*, Case C-180/97, ECR 1997 I-5245; Order

not be interpreted as covering also the governments of the regions or other local authorities of the Member States without prejudice to the institutional balance provided for in the Treaty¹⁹. It follows that the *locus standi* of the infra-State authorities can be assessed only in the very restrictive terms of the fourth paragraph of Article 263 TFEU, which, as seen above, requires proof that the applicants are directly concerned and, in some cases, also individually concerned by the measures they intend to annul.

8. One example, among many, with the additional interest of involving a Portuguese region²⁰, may serve as an illustration of this line of case-law²¹.

The Azores brought an action for annulment seeking partial annulment of a EU Regulation, which had been adopted with the favourable vote of the Portuguese government²².

Following the expiry of the transitional period provided for in the Act concerning the conditions of accession of Spain and the Portugal,

of the Court of First Instance of 12 March 2007, Regione autonoma Friuli-Venezia Giulia v Commission of the European Communities, Case T-417/04, ECR 2007 II-641; Judgment of the Court (Grand Chamber) of 2 May 2006, Regione Siciliana v Commission of the European Communities, Case C-417/04 P. European Court Reports 2006 I-3881.

¹⁹ RUIZ-JARABO COLOMER rightfully notes that, in certain contexts, the Court of Justice has adopted a loose interpretation of the term State. For example: as regards direct effect of Directives, the Court considers that the term includes any body, whatever its legal form, which has been made responsible for providing a public service and has for that purpose special powers beyond those which result from the rules applicable in relations between individuals. In the Advocate General's words: "the Court has followed a variable geometry approach, which changes according to the field under consideration and exhibits the pragmatism employed to secure the effectiveness of Community law, in order thus to satisfy the desire for integration inherent in the Treaty."

See Opinion of Advocate General Ruiz-Jarabo Colomer delivered on 12 January 2006, Regione Siciliana v Commission of the European Communities, Case C-417/04 P, ECR 2006 I-3881, paras 40 et seq, para. 43.

²⁰ As regards the form of State, Portugal can be characterized as a unitary State, partially regional. Portuguese Constitution admits two political and administrative autonomous regions: Azores and Madeira.

²¹ See Order of the Court of 26 November 2009, Região autónoma dos Açores v Council of the European Union, Case C-444/08, ECR 2009 I-200.

²² Council Regulation (EC) 1954/2003 of 4 November 2003. OJ 289, 7.11.2003, p. 1-7.

the contested Regulation introduced a new fishing effort management system for the Union waters in the North-East Atlantic, which included the waters of the Azores (the exclusive economic zone of the Azores extends up to 200 nautical miles from the baselines of the islands of the archipelago). The Regulation established the procedure to be followed for the adoption of a Regulation fixing the maximum annual fishing effort for each Member State, and provided the following:

“In the waters up to 100 nautical miles from the baselines of the Azores, Madeira and the Canary Islands, the Member States concerned may restrict fishing to vessels registered in the ports of these islands, except for Community vessels that traditionally fish in those waters in so far as these do not exceed the fishing effort traditionally exerted.”

The basic concern of the Azores' authorities was the opening of fishing for deep-sea species in the waters of the Azores to non-Portuguese vessels. They feared that the access of Spanish vessels to those waters would put at risk fish stocks, and argued that the Regulation would have harmful effects on the specific marine environment of the Azores and, consequently, also on the economy of the Azores region.

In its ruling, the Court of First Instance, confirming previous case-law, observed that, under the system established by the Treaties, governmental authorities of the Member States alone, and not regional authorities, had *locus standi* to defend the general interest in their territories. It is for the authorities of the State to represent these interests, regardless of the constitutional form or the territorial organisation of the State. Therefore, the Azores should be treated as a private applicant, whose right of action is dependent on the requirement of direct and individual concern²³.

When assessing these requirements, the Court noted that legal persons acting under the fourth paragraph of Article 230 EC (now Article 263 TFUE), may not, in order to show that they are individually concerned by a Union act, rely only on the consequences of that act on the collectivity or the entirety of its members. The general interest which a region may have in obtaining a result that is favourable for its economic prosperity is

²³ Case C-444/08, cit above, para. 63.

not sufficient on its own to enable it to be regarded as being individually concerned, for the purposes of the fourth paragraph of Article 263 TFUE.

Accordingly, the Court found that the action for annulment brought by Azores was inadmissible.

9. There is extensive literature and case-law on the interpretation of the concepts of direct and individual concern, which raise serious issues, far from resolved, that cannot be addressed within the confines of this article.

It suffices to note that in the case-law of the Court of Justice standing requirements of private applicants, specially the test of individual concern, are narrowly construed.

In light of the case-law of the Court of Justice, the test of direct concern requires: first, that the measure directly affects the legal situation of the individual and, secondly, that there should be no discretion left to those responsible for its implementation²⁴.

In assessing individual concern, the Court of Justice further requires, since *Plaumann*, that the contested act “affects the applicants by reason of certain attributes peculiar to them, or by reason of a factual situation which differentiates them from all other persons”²⁵.

It should be noted, however, that among the criteria on the basis of which the existence of an individual concern can be determined, the Court has already included the effect of a Union act on the powers of an infra-State entity. In the Azores decision, the Court considered that this case-law did not apply to the circumstances of the case. But in *Land Oberösterreich*, the Court of First Instance recognized that the *Land Oberösterreich* had *locus standi* because the contested decision had the

²⁴ Judgment of the Court, 3 October 2013, *Inuit Tapiriit Kanatami and Others v European Parliament and Council of the European Union*, Case C-583/11 P, Digital reports, para. 16. On the interpretation of this concept in assessing a sub-state entity standing, see Judgment of the Court of 2 May 2006, *Regione Siciliana v Commission of the European Communities*, Case C-417/04 P, ECR 2006 I-3881, paras. 21, 24, 30.

²⁵ See, *inter alia*, Judgment of the Court of 15 July 1963, *Plaumann & Co. v Commission of the European Economic Community*, Case 25/62, English special edition 1963, 95; Judgment of the Court, 3 October 2013, *Inuit Tapiriit Kanatami and Others v European Parliament and Council of the European Union*, Case C-583/11 P, Digital reports, para. 71.

effect of preventing the exercise of its own powers conferred on it by the Austrian constitutional order²⁶. Consequently, it may be necessary to enquire whether the contested provisions affects the scope of powers of the infra-state entity.

Despite these developments, the constitutional rules of internal division of powers can not, by itself, support the right of access to the Court of Justice of the sub-state entities.

Nor can it be anticipated that the case-law of the Court will evolve towards the recognition of a right of access of the infra-state entities to the Court of Justice in terms comparable to that of the States.

Such a broad configuration of sub-state entities active *locus standi* as regards action for annulment would certainly open the door to the recognition of their passive *locus standi* in infringement proceedings under Articles 258 to 260 TFUE, and this would remove the responsibility of States for non-compliance attributable to sub-state entities.

Stated in simple terms, if one allows those communities access to the Court of Justice of the EU as plaintiffs, to defend their interests and their sphere of competence, one must also admit that they can be sued in the Court of Justice when the breach of EU law is attributable to them²⁷.

In the end, giving sub-state entities privileged status in access to the annulment action would jeopardize the effective application of Union law.

Also, as LOUIS argues – with good reason –, recognition of the legal standing of sub-state entities would require the Court to rule on internal conflicts that must be resolved by constitutional type instruments²⁸.

²⁶ See Judgment of the Court of First Instance of 5 October 2005, Land Oberösterreich and Republic of Austria v Commission of the European Communities, Joined cases T-366/03 and T-235/04, ECR 2005 II-4005, para. 28.

²⁷ In support of a revision of the Treaty, in order to allow the monitoring of compliance with Union law by infra-State entities in the context of infringement proceedings, *vide* GIL IBÁÑEZ, Alberto J. – *The “Standard” Administrative Procedure for Supervising and Enforcing EC Law: EC Treaty Articles 226 and 228*. Law and Contemporary Problems, 2004, 135 et seq, at. 151-154.

²⁸ LOUIS, Jean-Victor – *La Cour de Justice après Nice*, in DONY, Marianne e BRIBOSIA, Emmanuelle (eds.) – *L’avenir du system juridictionnel de l’Union Européenne*. Bruxelles: Institut d’Études Européennes, 2002, 5 et seq, at 17.

10. True, there are alternative routes to EU Courts.

It should first be mentioned the possibility of indirect review of EU measures through the preliminary ruling procedure under Article 267 TFEU.

There is also the possibility, opened by the Treaty of Lisbon (Article 8, paragraph 2, of the Protocol on the application of the principles of subsidiarity and proportionality²⁹), that the Committee of the Regions, in which these sub-state entities are represented, brings an action under Article 263 TFEU on the grounds of breach of the principle of subsidiarity in respect of legislative acts the adoption of which the Treaty requires the Committee to be consulted³⁰.

Last, though not least, national legal systems can also contribute to ensure sub-state entities a wider access to EU justice. German and Italian legal systems already do so by requiring State authorities to challenge at the Court of Justice EU measures that put at stake the interests of the Länder and the regions.

11. This last observation further corroborates the conclusion already brought to light by the antecedent discussion: sub-states entities' involvement in the EU affairs is still largely dependent on the political and constitutional prerogatives that some of these entities enjoy under their national constitutional systems.

Nonetheless, the novelties introduced by the Lisbon Treaty, in particular, the insertion of the local and regional dimension into the concept of subsidiarity, and the granting of access to the Court of Justice to the European regional institution, the Committee of the Regions, for actions alleging a breach of subsidiarity, open new promising perspectives for the future role of sub-state entities in the European political landscape.

²⁹ Vide JEFFERY, Charlie e ZILLER, Jacques – *Le Comité des régions dans la mise en oeuvre et le contrôle des principes de subsidiarité et de proportionnalité à la lumière de la Constitution pour l'Europe*. Bruxelles, Comité des Régions, 2006.

³⁰ Pursuant to article 263 TFEU, third paragraph, the Committee of the Regions has also access to actions for annulment for the purpose of protecting its prerogatives. The Committee of the Regions and the European Central Bank are considered semi-privileged applicants. The Treaty establishing a Constitution for Europe already recognised this prerogative. See Article III-365(3) of the Constitutional Treaty.

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