

The Dutch wish-list for a lighter regulatory touch from the EU

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The Dutch government set out the results of its review of EU competences on June 21st, under the slogan “European where necessary, national where possible”, claiming that in the exercise of its competences the EU is not adequately respecting the principles of subsidiarity and proportionality in practice. It published a list of 54 points for corrective action (summarised in Table 1, below).

The Dutch initiative is a lighter, quicker and politically more moderate version of what the UK government announced in February, when Prime Minister Cameron set out how his government’s “Balance of Competences Review” would fit in with his intention to revise the UK’s relationship with the EU and submit the result to an ‘in-out’ referendum by 2017.

Unlike the British, the Dutch are not raising the issues of treaty change, or repatriation of competences, or possible secession. Like the British, however, they have been conducting a systematic review of EU competences, with a view to identifying legislation that does not adequately respect the principles of subsidiarity or imposes excessively heavy or rigid implementation burdens on member states.

The Dutch action points fall into several broad categories:

A/ where the cross-border aspects are judged to be too weak to justify EU legislation (e.g. road tunnel regulations);

B/ where EU action is justified, but implementing rules are too rigid or burdensome, or otherwise in need of revision (e.g. telecoms regulation);

C/ more politically charged issues, notably those concerning taxation and social security provision, where the EU should ‘keep out’.

The essential character of the 54 action points is signalled in the table below, with each item marked (A), (B), or (C). The simple numerical results are that by far the largest number concern excessively burdensome or rigid implementation rules (34 cases), while those contested on grounds of insufficient cross-border aspects, and those raising political issues over the distribution of competences between the EU and national level, are also significant in number (10 in each case).

There is also a fourth category consisting of the notable absentees from the list, or ‘dogs that did not bark’. For example, one may speculate about why the policy domains of foreign,

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security and defence policies, development cooperation, and repair of the euro system, received little or no attention. The exclusion of foreign policy may be because of purely formal reasoning; that it involves little legislation, or maybe because the Netherlands has no objection to the status quo in this area. The government's cover note to its detailed paper does list domains warranting a "strong need for European cooperation", namely "the financial and economic crisis, energy, climate change, asylum and migration, completion of the internal market, tax fraud and evasion, and cooperation in the field of defence".

Dutch Foreign Minister Frans Timmerman has commented that the 2014 European Parliament elections and the Dutch 2016 EU Presidency would be good opportunities to test these ideas. The timing of the Dutch Presidency is particularly important because of how it closely precedes the British referendum that is expected in 2017.

Assessment

The Dutch initiative is all the more important because the Netherlands is a founding member state of the EU, fully integrated into all EU policies – including, of course, both the euro and Schengen area – but also a country witnessing a long trend towards euroscepticism in public opinion. The Dutch do not propose the repatriation of any competences as specified in the treaties, nor any opt-outs, but they are concerned with how EU competences are applied. On this account the Dutch discourse has a broad resonance across much or maybe even all of the EU. Even the newest member state, Croatia, as of 1 July 2013, has discovered how the European Commission is capable of producing an extraordinarily ill-judged initiative that affects it directly, such as how olive oil should be packaged on the tables of restaurants (a proposal now withdrawn).

The main Dutch message about excessively intrusive and burdensome EU legislation and implementation provisions is both highly technical and highly political at the same time. Microscopic actions, such as the olive oil packaging fiasco, can connect with public opinion like wild fire. And these can and do interact synergetically (negative synergies, however) with the macroeconomic distress in terms of recession and unemployment caused by the crisis of the euro system. According to the Eurobarometer the EU is seeing a decline in public support across the whole of the EU, which Pascal Lamy described in his public lecture at the Brussels Economic Forum on June 19 as a truly "existential crisis", calling for a "fresh political narrative" to represent a positive future for the European Union.

The Dutch initiative can be regarded as the starting gun for a long process of correcting unjustified or ill-judged EU policies, and thence in a positive scenario to connect with strategic initiatives, such as in foreign policy and eurozone recovery, in order to create new positive synergies in the perceptions of the public.

For sure, some of the Dutch positions may fail to secure widespread support. For example (in this author's opinion) the proposed Common Consolidated Corporate Tax Base, especially as a voluntary initiative under 'reinforced cooperation', has much to recommend it, without implying any harmonisation of corporate tax rates.

But the main challenge is whether the Dutch initiative can lead to an EU-wide movement of support for a 'cleansing operation', i.e. to secure a perceived step change in the application by the EU of the principles of subsidiarity and proportionality and the quality of its regulatory activity. And in the course of so doing, it should help get the British initiative firmly drawn onto a European reform agenda, rather than be left as a scenario of attempted repatriation of competences and increased opt-outs, and thence into the political dynamics of secession and disintegration.

Table 1. Summary of action points in the Dutch initiative on subsidiarity and proportionality in EU legislation

Action points in the Dutch initiative on subsidiarity and proportionality in EU legislation		
No.		Category
EU institutions		
1.	European political parties – lighten proposals for their achieving legal status	(B)
2.	EU staff salaries – revise method for annual negotiations	(B)
3.	EU agencies – stricter observance of conditions for new agencies	(B)
4.	EU budget – advocates critical look at efficiency	(B)
Foreign affairs		
5.	EU aid volunteers – proposals too top-heavy bureaucratic	(B)
6.	Consular assistance for EU citizens – proposals too strict and detailed	(B)
Internal market		
7.	Customs code – greater flexibility in implementation procedures	(B)
8.	Statistics on intra-EU trade – less burdensome reporting requirements	(B)
9.	Construction materials – less burdensome harmonised conditions	(B)
Economic and financial affairs		
10.	Financial transactions tax – limit impact outside countries applying this	(B)
11.	Shock absorber fund for euro area – rejects case made for this	(C)
12.	Direct taxation – EU should keep out, except for cross-border aspects	(C)
13.	Indirect taxation, notably on cars – EU should keep out	(C)
14.	Infringement proceedings on tax differences – Com. should cease these	(B)
15.	Insurance for disasters – rejects case for harmonising legislation	(C)
16.	Insurance guarantee schemes – rejects case for harmonising legislation	(A)
17.	Payment account fees – doubts case for EU legislation	(A)
Justice and home affairs		
18.	Family reunification – greater flexibility of directive needed	(B)
19.	Admission of third-country nationals – cut categories covered by EU rules	(B)
20.	Criminal procedure law – limit harmonising aspects	(B)
21.	Substantive criminal law – limit harmonising aspects	(B)
22.	Social dialogue for central government staff – repeal decision on committee	(A)
Agriculture and fisheries		
23.	Forestry – EU keep out	(A)
24.	Olive oil packaging – excessive Commission powers in ‘delegated acts’	(B)
25.	School milk and fruit – phase out programme, leave to member states	(A)
Environment		
26.	Environmental noise – stick to standards for sources of noise	(A)
27.	Environmental impact assessments – less detailed EU legislation	(B)
28.	Water quality – more flexibility needed in assessments	(B)

Table 1. Cont'd

No.		Category
29.	Air quality - more flexibility needed assessments	(B)
30.	Coastal management - EU keep out	(A)
31.	Soil management - Com. abandon proposals, limited international aspects	(A)
32.	Floods Directive - restrict it to major waters, less detail	(B)
33.	Biofuels in renewable energy directive - reduce administrative burden (B)	(B)
Education/youth affairs/culture/sport		
34.	Media freedom - against EU legislation	(C)
35.	Student mobility - [obscure question]	(B)
Transport/Telecommunications/Energy		
36.	Tunnel safety - against EU legislation	(A)
37.	Rail transport opening - case for further measures doubted	(A)
38.	Global versus EU action - prefers global action in some cases	(B)
39.	Telecomm package - supports broadly, but too rigid implementation rules	(B)
40.	Broadband regulation - more flexibility for national implementation	(B)
41.	Public sector websites - no need for EU legislation	(A)
42.	Buildings energy performance - more flexibility in implementing directive	(B)
43.	Energy efficiency - more flexibility for national implementation measures	(B)
Employment/Social policy/Public health/Consumer affairs		
44.	Globalisation adjustment fund - limit scope as far as possible	(C)
45.	EU agreements with third countries on social security - against EU action	(C)
46.	Social security systems - no further harmonisation	(C)
47.	EU aid for most deprived - against EU action	(C)
48.	Gender balance in enterprises - against EU legislation	(C)
49.	Revision of pension fund Directive - critical monitoring of revision process	(B)
50.	Portability of pensions - proposal under preparation to be evaluated	(B)
51.	Safety/ health sector agreements - cautions EU legislation (e.g. hairdressers)	(A)
52.	Equal treatment outside labour market - clarify EU versus national roles	(B)
53.	Extending maternity leave - opposes revival of blocked proposal	(C)
54.	Organ donation Directive - contests provisions beyond quality and safety	(B)