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Comparing the Subnational Constitutional Space of the European Sub-State Entities in the Area of Foreign Affairs

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Abstract

Foreign affairs have been traditionally seen as an exclusive competence of central governments. However, over the last 30 years, European paradiplomacy has been progressively developing not least because of the institutional opportunities that the Union composite constitutional order provides for the participation of the regional tier in its decision-making processes. The present paper examines how the European multilevel systems have allowed for the creation of such ‘sub-national constitutional space’ enabling their constituent units to be active in the international arena. It does so by examining the treaty-making powers of the sub-state entities, the mechanisms that allow their participation in the foreign policy making of the central government and the implementation of the international treaties. Finally, it focuses on their autonomous external representation at the EU level. It argues that, despite conventional wisdom, States do not enjoy a monopoly of competences in the area of foreign affairs.

Key-words

‘sub-national constitutional space’, ‘constituent diplomacy’, ‘foreign affairs’,
‘comparative constitutional law’



1. Introduction

In his seminal *Federal Government*, KC Wheare ‘asserted that a monopoly of foreign affairs is a “minimum power” of all federal governments’ (Paquin 2010: 163). He pointed to the negative consequences of decentralization over foreign affairs not only for the respective national interests but also for the functioning of the international system. Similarly, Robert Davis noted that issues concerning international relations are at the heart of federal regimes (Davis 1967). Contrary to such conventional wisdom, the sub-state entities across the world have been engaging in international relations and conducting foreign policy parallel to the one of their central governments (Requejo 2010). Especially in Europe, during the last thirty years, sub-state diplomacy¹ has been developing to such an extent that it has been convincingly argued that its differences with classical state diplomacy has narrowed significantly (Criekemans, 2010a, Criekemans, 2010b, Criekemans, 2010c, Criekemans and Duran 2010). Such trend to allow the sub-state level to have competences in the area of foreign affairs is largely a by-product of the growth of the EU ‘which led the constituent governments [...] to demand a direct voice in EU decision-making affecting their constitutionally protected powers’ (Kincaid 2010: 19).

The scope of the present article, however, is not to explain the phenomenon of the rise of the constituent diplomacy in Europe *per se*. Instead, the aim of this contribution is to understand how the different European multilevel constitutional orders have allowed for the creation of such ‘subnational constitutional space’ (Williams and Tarr 2004: 3) that enables the respective component units to be active in the international sphere. To do that, the paper first analyses the relevant constitutional mechanisms that permit sub-state entities not only to conclude and implement ententes and formal international treaties but also to participate in the foreign-policy making of the central government including the EU decision-making processes (Part 2). Second, I examine the possibilities of the sub-state entities with legislative competences to represent their interests beyond the national borders with a special focus at the EU level (Part 3).

Our focus on the channels for sub-state representation at the Union decision-making processes does not negate the fact that, within a number of constitutional orders including the German one, EU law is not considered international law. However, the



significant participatory rights of the sub-state level at the EU multi-tier system together with an increasingly favourable legal framework for a more active presence of the regions beyond the borders of their own State¹¹ dictate the need to understand the EU level as their real template of discussion about their foreign relations and thus relevant for our analysis. Be that as it may, the present contribution starts ‘from a top-down [...] view to determine the quantity and quality of “subnational constitutional space” permitted by the national constitution’ to the sub-state entities (Williams and Tarr 2004: 13-14; Williams 2011: 1112). At the same time and in order to provide for a more complete picture, reference is made - when appropriate- to the relevant sub-state constitutional documents in order to better understand how and to what extent the relevant component units utilised such ‘subnational constitutional space’ (Williams 2011: 1114). The paper mainly focuses on the constitutional orders of those Member States where the regional tier enjoys a constitutionally grounded claim for participation in the policy-making processes. Those Member States include the federal Austria, Belgium and Germany and the regionalised Italy, Spain and the United Kingdom. The thesis of the paper is that the analysis of those constitutional orders and the practice of the sub-state entities question the traditional idea according to which States enjoy a monopoly of competences in the area of foreign affairs.

2. Creating and Implementing International Obligations

Conclusion of international agreements lies at the heart of the conduct of diplomacy. International actors negotiate, conclude and implement treaties virtually on a daily basis in order to achieve their policy goals. So, in this part of our article, we will firstly examine those constitutional provisions that allow the sub-state level of the European States not only to conclude international agreements but also to participate in the treaty-making process of the central governments, which remain the main actors in the international arena. However, given the effect of international and EU law on the constitutionally protected competences of the constituent units we also refer to the implementation phase of the international agreements and EU law within those multilevel orders.



2.1 Treaty-making powers of the sub-state level

As I already mentioned, the exercise of foreign policy has been traditionally within the domain of the federal government. However, given the vertical separation of powers, it is hardly surprising that the sub-state entities possess at least some treaty-making competences within those constitutional orders that they enjoy a ‘constitutionally grounded claim to some degree of organizational autonomy and jurisdictional authority.’ (Halberstam 2008: 142) However, as we will notice, such treaty-making powers of the governments of the component units are usually limited in three possible ways. One possible limit is that treaties concluded by the regional tier may be subject to consent, review, or abrogation by their nation-state government. This is the case in Austria, Germany, Belgium and Italy. Second, the treaty-making power is limited to areas that fall within the competences of the sub-state level in every multilevel constitutional order that we analyse (Kincaid 2010, 20). Third, the constituent units may not be able to sign treaties under international law but only cooperation agreements such as the ones signed by the UK devolved administrations. Starting with Austria, the competences of the *Länder* are extremely weak and limited to bordering States and their regions (Blatter et al. 2008: 470; Kiefer 2009: 68). In fact, Article 16(1) of the Austrian Constitution provides that the constituent units ‘can conclude treaties with states, or their constituent states, bordering on Austria’ ‘in matters within their own sphere of competence.’ Indeed, Article 54 of the constitution of the bordering *Land*, Vorarlberg, for example, accepts such geographic limitations by repeating almost *verbatim* the aforementioned provision. In addition, in order to conclude such an international agreement, the *Länder* should inform the central government and obtain its authorization before they sign it.^{III} The control of the central government over the paradiplomacy is so extensive that the federal level has a constitutional right to ask a *Land* to revoke any agreement even if it was concluded in accordance with the aforementioned procedure. If a ‘*Land* does not duly comply with this obligation, competence in the matter passes to the Federation.’^{IV} Such constitutional ‘straightjacket’ is hardly surprising for a constitutional order that has been described as ‘a federation without federalism.’ (Erk 2004)

In comparison to the Austrian *Länder*, it seems that their German counterparts enjoy stronger constitutional rights to conduct autonomous foreign policy through treaty-making. Article 32(3) of the German Basic Law recognises the right of the *Länder* ‘to



conclude treaties with foreign states with the consent of the Federal Government'. They may even, with the consent of the central government, transfer sovereign powers to trans-border institutions 'insofar as [they] are competent to exercise state powers and to perform state functions'.^V Such provision is also compatible with the reasoning of Regulation 1082/2006 on a European grouping of territorial co-operation (EGTC). According to this relatively new legislative instrument, sub-state entities from different Member States may also establish an EGTC which enjoys legal personality under EU law.^{VI} As such, the EGTC is able to act, 'either for the purpose of implementing territorial cooperation or projects co-financed by the' Union 'notably under the Structural Funds' or 'for the purposes of carrying out actions of territorial cooperation which are at the sole initiative' of Member States or the sub-state entities (Committee of the Regions 2007; Strazzari 2011).^{VII}

Overall, it is noted that, although the German Basic Law gives the predominant role in the area of foreign affairs to the Federal Government,^{VIII} the aforementioned provisions convincingly prove that the Federation does not monopolise the treaty-making powers (Hrbek 2009: 147). This finding is verified by political practice. For instance, Bavaria, which is traditionally very active in establishing and developing formal relations both with organizations and territories within the European Union as well as with different regions around the world, has concluded 32 bilateral treaties (Criekemans 2011).

Contrary to the Austrian and the German sub-state entities, the Belgian regions and communities do not have their own constitutions (Poppelier 2011). However, they enjoy the most strongly developed constitutional rights to maintain autonomous foreign relations worldwide (Paquin 2003: 627). This is largely a result of the fact that the Belgian constitutional order recognises the principle of parallelism between internal and external powers (Dumont et al. 2006, 44-46; Bursens and Massart-Piérard 2009: 95-97). According to Article 167 of the Constitution, the federal government conducts Belgium's foreign relations

'notwithstanding the competence of Communities and Regions to regulate international cooperation, including the concluding of treaties, for those matters that fall within their competences in pursuance of or by virtue of the Constitution.'



Despite this unique feature of Belgian federalism, according to which the Belgian sub-state level is under no form of political tutelage with regard to competences belonging to them, Article 167 is accompanied by a number of mechanisms for information, cooperation and substitution in order to ensure the coherence of Belgium's presence in the international arena (Bursens and Massart-Piérard 2009: 96). According to those mechanisms, the region/community involved in treaty negotiations should inform the Federal Council of Ministers, which in turn must decide within thirty days to suspend the negotiations. In that case, the Interministerial Conference of Foreign Policy^{IX} -composed of representatives of the federal governments and the governments of the component units- decides by consensus whether to allow the treaty-making process to continue (Dumont et al. 2006: 45). Given this rather extensive 'subnational constitutional space', the Belgian constituent units have developed a thriving international activity. Flanders has concluded 33 exclusive treaties out of which 6 are multilateral. The Walloon Region has concluded 67 treaties while the French-speaking community 51 (Crickemans 2010a: 20).

Apart from the sub-state level of the three aforementioned federations, constituent diplomacy can be also observed in those EU Member States where there is a regional tier with legislative competences. For instance, in Italy 'regions may enter into agreements with foreign States and local authorities of other States in the cases and according to the forms laid down by State legislation.'^X However such constitutional right is not unconditional according to Law No. 131/2003. In cases of agreements with sub-state authorities of other States, the prior communication of the Italian central government is a prerequisite. On the other hand, international treaties with other States may only be executed and performed regularly as an international agreement in force. This means that they should be first submitted to the Italian State and can 'be signed by the region only on the basis of granting full powers of signature as the regulation of international treaties provides for'. (Argullol i Murgadas and Velasco Rico 2011: 412) Such conditions have been accepted by the regional tier. For example, Article 71(2) of the *statuto* of *Regione Toscana* that 'in matters of regional responsibility, the Region is empowered to stipulate agreements with States and sub-state territorial bodies within the terms provided by the Italian Constitution and the sources from which it has drawn'.

In Spain, the Statutes of Autonomy, apart from being the basic fundamental norm of the Autonomous Communities,^{XI} perform a constitutional function, by indirectly



delimiting the powers of the central government. So, although according to the Spanish Constitution the central government has exclusive competences over international relations,^{XII} including treaty-making,^{XIII} and the sub-state level lacks powers to sign international agreements or treaties, different Statutes of autonomy have nonetheless included special provisions on the foreign promotion of culture or vernacular languages,^{XIV} international contacts with overseas migrant communities^{XV} and foreign aid.^{XVI} In fact, the Basque government has gone so far as to openly argue ‘for a limited understanding of the concept of international relations that reduces it to formal diplomatic representation, war and peace issues and the signing of treaties.’ (Lecours 2008: 11) It considers most of everything else as domestic activities and thus that it is entitled to be active. More importantly for our purposes, the evolving case law of the Constitutional Court has established what can be called the ‘constitutional framework’ for the international relations of the component units of the Spanish State (Aldegoa and Cornago 2009: 250). According to this,

‘the autonomous communities are entitled to develop diverse international activities as far as these activities are instrumental for the effective exercise of their own powers that the Constitution assigns exclusively to the national government, and neither affect the national government’s international responsibilities nor create new obligations.’ (Aldegoa and Cornago 2009: 251)

This has been verified in its famous recent judgment on the Catalan Statute of Autonomy.^{XVII} Chapters II and III of the new Catalan Statute that came into effect in August 2006 provide for quite an ambitious list of competences of the *Generalitat de Catalunya* in the international sphere. For instance, Article 195 provides that the Catalan administration ‘may sign collaboration agreements in areas falling within its powers.’ In spite of the fact that the majority of the provisions contained in those two chapters were challenged, the judgment did not declare any of them unconstitutional.

Finally and in order to complete the picture of treaty-making powers of the European component units, we note that, according to the UK ‘idiosyncratic constitution’, (Jeffery 2010: 104) the UK government enjoys exclusive competence over international relations.^{XVIII} So, none of the three devolved administrations may conclude treaties under international law. However, they may conclude cooperation agreements with regions and



sub-state entities such as the one that Scotland has signed with the Chinese Province of Shandong (Jeffery 2010: 116).

2.2 Mechanisms for involving the regional tier in foreign policy-making

I have shown in the previous section that virtually all component units with legislative competences possess some treaty-making powers. However, the sovereign States remain the main actors in the international arena. So, it is of crucial importance to analyse the constitutional mechanisms that allow the sub-state entities to take part in the foreign policy making of the central government. In general, the participation of the sub-state authorities in the formulation of the foreign policy -including that for the EU - of the respective Member State is facilitated by legislative chambers composed of representatives of the regions and inter-governmental bodies whether interregional or joint national-regional ones.

In this part, I mainly focus on two fundamental questions. First, I examine whether the participatory rights of the regions in the foreign policy making process are constitutionally or legally guaranteed or guaranteed by non-legislative means. In the case of the upper chambers, the answer is rather straightforward. In the case of the coordination bodies, the picture is rather mixed. Secondly, I analyse whether the position adopted by the component units through those mechanisms is binding for the respective Member State.

Although, the Austrian *Länder* have only rather limited treaty-making powers, their ability to influence foreign policy making is stronger. Article 10(3) of the Austrian Constitution provides that the Federal Government should allow the sub-state tier an opportunity to present their views before the conclusion of treaties which affect their autonomous sphere of competence. With regard to EU affairs, the threshold is even higher. The Austrian constitution goes so far as to provide a requirement for the government to inform the regional and local authorities both directly^{XIX} and indirectly through the *Bundesrat*.^{XX} Where the proposed Union legislation should be implemented in accordance with a procedure, which requires the agreement of the *Bundesrat*,^{XXI} then the Government is bound by the opinion of the upper chamber during the negotiations that take place in the EU framework. Similarly, if the State receives a 'uniform comment' from



the *Länder* -through either the Conference of Integration (*Integrationskonferenz*) of the Austrian *Länder* (IKL) or the non-institutionalised but very influential Conference of the Presidents of the *Länder* (*Landeshauptmännerkonferenz*)- on some Union legislative proposal within *Land* competence, it is bound to respect that opinion during negotiations and voting at the EU level.^{xxii} The Government may only deviate from those unitary positions ‘for compelling foreign and integration policy reasons’.^{xxiii} In that case, the reasons should be immediately communicated to the *Länder*. Where the EU subject matter lies outside the legislative powers of the *Länder* but touches on their interests, the federation must take into account the written opinion of the *Länder*. This obligation does not stem from the Constitution but from a constitutional agreement between the Federation and the *Länder* according to Article 23d(4).^{xxiv}

In Germany, the Constitution does not clarify whether the *Bund* is authorised to conclude a treaty on matters under *Land* jurisdiction. So, in 1957, the Federal government and the *Länder* concluded the so-called *Lindauer Abkommen* agreement. According to this agreement, when treaties with foreign States are under preparation, the component units should be given the earliest possible opportunity to raise their concerns and demands (Hrbek 2009: 147). In addition, pursuant to Article 59 of the German Basic Law, the explicit assent of the *Bundesrat* is necessary for international treaties dealing with political relations between Germany and foreign states. Both those mechanisms ensure the participation of the *Länder* in exercising the treaty-making power of the federation.

The role of the *Bundesrat* is also pivotal concerning the EU affairs. Article 23 (4)-(5) of the German Basic Law and an *ad hoc* Act of Cooperation in 1993 (European University Institute 2008: 148) regulate the relationship between the Federal Government and the 16 *Bundesländer* that are united in the *Bundesrat*. According to paragraph 4, the Government informs the *Bundesrat* which can participate ‘insofar as it would have been competent to do so in a comparable domestic matter’.^{xxv} Each *Land* having a weighted vote, the *Bundesrat* adopts by majority a common position of the *Länder*. The opinion of the *Bundesrat* carries varying degrees of influence depending on what kind of competences the relevant decision concerns. If the relevant decision concerns an exclusive competence of the Federal Government, the opinion of the *Bundesrat* just needs to be taken into account.^{xxvi} If the decision affects ‘the legislative powers of the *Länder*, the structure of *Land* authorities, or *Land* administrative procedures [...] the position of the *Bundesrat* shall be given the greatest



possible respect in determining the Federation's position consistent with the responsibility of the Federation for the nation as a whole.^{xxvii} In case of disagreement, there is a conciliation procedure (European University Institute 2008: 148). The federal government can override the *Bundesrat* veto in cases where the general political responsibility of the Federation and its financial interests are at stake (European University Institute 2008: 148). To complete the picture concerning the role of the German sub-state entities in foreign policy making we have to note that, by virtue of Article 23(1), the approval by a two-thirds majority of the *Bundesrat* is necessary for the ratification of Treaties that amend the Union structure. Such majority is the same with the one necessary for the constitutional revision of the Basic Law.^{xxviii}

While the long-standing cooperative federal cultures of Austria and Germany have dictated those constitutionally enshrined obligations for information and consultation of the regional tier, the conflictual political system of Belgium has led to the establishment of a really inclusive coordination procedure. In order to understand how coordination is achieved in a system where there is no hierarchy of norms between the federation and the federated entities, we will use as an example the EU affairs. The relevant procedure is provided in the 1994 Cooperation Agreement between the federal government and the sub-state entities.^{xxix} Generally speaking, it is the Directorate for European Affairs in the Foreign Ministry which has the responsibility to coordinate the Belgian positions within the EU. In order to achieve this, it regularly convenes a Coordination Committee on European Affairs. Every decision on the Belgian position is reached in the Directorate General by representatives of the federal prime minister and deputy prime ministers, of the minister-presidents of the different sub-state entities and of those ministers who are responsible for the subjects on the agenda. It is important to stress that all the decisions have to be reached by consensus, especially those ones that touch on regional or community competences. If consensus is not achieved, the matter can be referred to the Interministerial Conference for Foreign Policy and thence to the Concertation Committee. If agreement is not reached even in that phase, customary practice has been established that the representative of Belgium abstains in the Council. However owing to the Belgian tradition of consensus and to the fact that the Belgian influence in the Council deliberations would otherwise be completely lost, a common Belgian position is regularly reached (European University Institute 2008: 64-66; Sciumbata 2005: 117-118).



Contrary to the inclusive nature of the procedures existing in the three aforementioned federations, the case of Italy is somewhat different. Although the competences of the Italian sub-state entities to maintain foreign relations have been expanded, they still have limited means to influence Italian foreign policy. The main duty of the central government is to guarantee a constant flow of information to the Italian regions concerning any international activity both of the central government and the constituent units (Blatter et al. 2008: 473). With regard to the EU affairs, the Law No. 11/2005, which regulates the regional participation in European policy-making provides in Article 5 that when the relevant EU draft legislation is related to regions and local authorities, it should be transmitted to the competent territorial associations for comment; namely, the Conference of the Regions and the Autonomous Provinces (*Conferenza delle regioni e delle province autonome*, hereafter CRPA) and the Conference of the Presidents of the Assembly of Regional Council and of Autonomous Provinces. Upon reception, the draft legislation is forwarded by those two associations to the presidents of the regional executive committees and of the regional councils. They have twenty days to submit their comments to the government. If the legislation is of particular importance for the regions and the autonomous provinces or if one or more of the regions or the autonomous provinces so requests, the government convenes the Permanent Conference for the Relations between the State, the Region and the Autonomous Communities (*Conferenza permanente per i rapporti tra lo stato, le regioni e le province autonome*) to reach a common position within twenty days. After this period of time lapses or in cases of urgency the government can proceed. If the Permanent Conference so requests, the government puts a 'reservation of examination' (*riserva di esame*) in the Council of the EU.^{xxx}

The Spanish Constitution of 1978, as I mentioned before, stipulates that the central government has exclusive power over foreign and defence policy,^{xxxI} including treaty making.^{xxxII} In addition the Spanish *Senado* cannot be considered as a mechanism for the collegiate representation of regional tier in the same way that the Austrian and the German *Bundesräte* can. However, the majority of the sub-state Statutes provide for the rights of the Autonomous Communities to be informed about international treaties signed by the central government and^{xxxIII} to ask the central government to enter into international negotiations on matters affecting their competences,^{xxxIV} while a number of them allow for the possibility of participation in international negotiations within the Spanish



delegation.^{xxxv} The new Catalan Statute adopted in 2006 includes all such provisions. Thus it is very interesting for the ‘constitutional framework’ of the foreign affairs of the autonomous Communities that the Constitutional Court did not hold any of them unconstitutional.

Be that as it may, the main template for intergovernmental relations in the area of foreign affairs has been the EU. Article 6 of the Law 24/2009 of 22 December 2009, establishes the national parliament's duty to transmit any EU draft legislative act to regional parliaments, without any filtering procedure. However, EU matters within the respective policy fields are handled by the Sectoral Conferences. In 1992, the Sectoral Conference for Union Affairs (CARCE) was set up with top officials from the State and the Autonomous Communities. 5 years later it was formally institutionalised by virtue of Law 2/97. It now acts not only as a forum for the exchange of information and the implementation of Union policies but also for the participation of the Autonomous Communities in the preparation of the Spanish position in European decision-making. More analytically, as regards shared competences the central government tries to reach a common position with the Autonomous Communities although it retains the final say. With regard to exclusive regional powers, if the Autonomous Communities reach a common position, the State has to defend it at the EU level (Bengoetxea 2005: 55; Ross and Crespo 2003: 226).

Finally, in the case of the UK, within the framework of devolution, the relative framework can be found in the Memorandum of Understanding and the Concordats on Co-ordination of European Union Policy Issues between the UK government and the devolved administrations which are non-legislative acts.^{xxxvi} Those agreements between the Whitehall and the devolved administrations envisage the full involvement of the devolved regional authorities in the formulation of the UK position in the EU and international relations touching on their responsibilities.^{xxxvii} In general, the relevant UK negotiating position is discussed at the relevant Joint Ministerial Committee. Ministers and officials from the three devolved administrations work as part of the UK team, with the UK minister determining the final position and retaining the overall responsibility.^{xxxviii}



2.3 Participation in the domestic process of implementation

As I have already mentioned, international and especially EU law affect the constitutionally protected powers of the sub-state entities. It is of cardinal importance, then, to understand not only when the sub-state entities may autonomously conclude international agreements and participate in the foreign-policy making of the central government but also their role in the domestic process of implementation of international law including EU law. Our starting point is that, in systems in which sub-state entities are assigned legislative powers that are constitutionally enshrined, responsibility for the implementation of Union legislation is shared between the ‘centre’ and the autonomous authorities (Raccah 2008). In that sense, it is hardly surprising that in federal and regionalised Member States there are special mechanisms on the one hand for the participation of the regional tier and on the other for ensuring compliance with their international obligations. The latter is of critical importance especially with regard to the Union law obligations given that a Member State might be held responsible for non-implementation even if the fault lies at the sub-state level. In fact, the CJEU has repeatedly held that a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time limits laid down in a directive.^{xxxix} For those reasons, in this part of my article I analyse both the mechanisms for the participation of the sub-state entities to the implementation of international law obligations including the EU ones but also the respective measures against non-compliance. A close look on such subsidiary powers of the central level allow us to appreciate the ‘sub-constitutional space’ of the regional tier in an area that has, arguably, led to a certain re-centralisation of competences (Bengoetxea 2005: 49).

In Austria, it is understood that the principles guiding the internal division of competences between the *Bund* and the *Länder* should be also followed when transposing and implementing international law. Article 16(4) of the Austrian Constitution provides that the *Länder* ‘are bound to take measures which, within their autonomous sphere of competence, become necessary for the implementation of international treaties’. Should a *Land* fail to comply with such international law obligation, competence for such measures passes to the Federation.^{xl} An almost identical provision exists with regard to obligations deriving from EU law under Article 23d(5). According to it, if a *Land* fails to meet the



relevant Union obligation in time –and that failure is subsequently established by the CJEU- the competence to take appropriate measures is automatically but temporarily devolved to the Federation. The relevant federal statute or Decree enacted to meet the obligation ceases to be in force as soon as the *Land* has taken the necessary measure itself. Moreover, the law on financial relationship between the Federation and the *Länder* regulates that the *Länder* have also to pay the damage incurred by the Federation because of illegal behaviour that has led to a proceeding against Austria before the CJEU.^{XLI}

On the other hand, German constitutional law does not consider EU law to be part of international law. Consequently, the internal division of powers applies also in the implementation of Union law unless otherwise provided for in the Basic Law.^{XLII} With regard to international law, although Article 32 of the German Basic Law lacks clarity, it seems that, in accordance with the principle of ‘federal loyalty’ (*Bundestreue*), the *Länder* are bound by federal treaties and have to take all measures necessary for their application (Nagel 2010: 124). So, if a *Land* fails to fulfill an international or EU obligation, the *Bund* may invoke a breach of the constitutional principle of ‘federal loyalty’ (*Bundestreue*). In such cases, it is accepted that the existence of a breach can be established directly by a ruling of a national court (Mabellini 2005:78). Alternatively, Article 37(1) of the Basic Law authorises the German federal government to ‘take the necessary steps’, if a *Land* does not fulfil federal duties (*Bundeszwang*). The provision can also apply in the case of a *Land* not properly implementing international or EU law. A decision of the federal government needs the prior approval of the *Bundesrat* deciding by simple majority. Finally, if the federal government suffers financial damage for being held liable in an international *forum* it has a claim against the *Land* under Art 104a(5).

In Belgium, where the principle *in foro interno, in foro externo* applies, the federal State and the sub-state entities are individually responsible for transposing Union legislation each within its own sphere of competence (Bursens and Massart-Piérard 2009: 99). The problem arises when –more often than not- a given Union act concerns more than one tier of government. In this case, the legislation to be transposed is split into separate parts that correspond to the various authorities that have to implement it (Mabellini 2005: 71). In case a sub-state entity does not implement an international or supranational obligation, the Constitution allows the federal state to use its ‘*droit de substitution*’ in order to ensure fulfilment of the relevant supranational obligation.^{XLIII} However the procedural conditions



to be met in order for this to happen are laid down by a special law.^{XLIV} According to it, the defaulting sub-state entity should be given the chance to defend itself before the relevant international Court. If the relevant Court, for example the CJEU, has condemned Belgium, the federal level can adopt a law with a special majority which authorises the Parliament or the Government to take the necessary measures to comply with Belgium's international obligations after defaulting, sending the sub-state entity a formal notice to comply within three months (Mabellini 2005: 76).

With regard to Italy, following the constitutional reform of 2001, Article 117 recognises that the regional authorities can implement international and Union law in the fields of their legislative competences. In fact, following this amendment a number of regions introduced new instruments designed to ensure the regular implementation of EU directives (Bilancia et al. 2010: E-138). In case 'the regions [...] fail to comply with international rules and treaties or EU legislation', Article 120(2) provides that the Government may act in substitution. In certain cases, the State is even given the authority to act in a preventive way. However, all those national measures aiming at avoiding non-compliance are temporary measures that can be substituted by regional acts (Bilancia et al. 2010: E-167).

The Spanish Constitution, in strictly legal terms, does not include the implementation of the Treaties within the international relations domain. 'Consequently, it does not establish the power to implement treaties either for the central government or for the autonomous communities.' (Aldecoa and Cornago 2009: 251) In contrast, some Statutes of Autonomy provide for the implementation of international treaties in the areas of their own competence.^{XLV} For instance, Article 196(4) of the Catalan Statute of Autonomy provides that the *Generalitat* 'shall adopt the necessary measures to carry out any obligations arising from international treaties and conventions ratified by Spain or binding on the State within the area of its powers.' Following such ambiguity of the Constitution, the Constitutional Court's case law seems to suggest that the most important aspect of 'this issue is not the distribution of powers but the idea that both the central government and the autonomous communities are obliged to comply with international treaties adopted by Spain.' (Aldecoa and Cornago 2009: 251)

With regard to the Union obligations, however, the Court has been more precise by holding that any requirement to transpose EU law into the Spanish legal order should not



give a right to the State to impinge the competences of the regional authorities (Ross and Crespo 2003: 220). However, occasionally, the State government adopts framework laws (*ley de bases*) for the implementation of directives (Bengoetxea 2005). More importantly, the Constitutional Court of Spain has interpreted Article 149(3) of the Constitution (principle of supplementary character) as allowing the Spanish government to pass laws of supplementary application in order to avoid State failure to implement Union law.^{XLVI} However, the State cannot use this provision to justify the application of State law in an area that it does not have explicit competence. It can only use the principle of supplementary character for those powers expressly included in the Constitutions and the Statutes of Autonomy.^{XLVII} Be that as it may, Article 150(3) provides also for an exceptional and extraordinary instrument for ensuring the compliance with international and Union obligations. This provision stipulates that whenever the general interest so requires, the State may pass 'laws of harmonisation' even in matters within the jurisdiction of the Autonomous Communities. It is for the *Cortes* to decide by an absolute majority in both chambers when such laws are necessary (Ross and Crespo 2003: 220).

Finally, point 21 of the non-legally binding Memorandum of Understanding stipulates that the three UK 'devolved administrations are responsible for observing and implementing international, European Court of Human Rights and European Union obligations which concern devolved matters.' However, it is the responsibility of the lead UK Department to formally notify the administrations of Northern Ireland, Scotland and Wales of any new international commitment or EU obligation concerning devolved matters.^{XLVIII} Following that, in bilateral consultation with the relevant UK Departments and the other devolved administrations, they decide 'how the obligation should be implemented and administratively enforced (if appropriate) within the required timescale.'^{XLIX} However, although the devolved administrations are responsible for implementation of the UK international obligations within their competences, the UK government reserves by law the right to intervene.^L In particular, if the UK government were to be fined for the failure or implementation or enforcement of a Union obligation by a devolved administration it would deduct the money from the block grant payable to the devolved administration.^{LI}

Lately, the UK government has suggested the introduction of a new section 57A into the Scotland Act to allow UK Ministers, concurrently with Scottish Ministers, to



implement international obligations in relation to matters within devolved competence. The rationale for this clause is to allow UK Ministers to implement international obligations on a UK basis where it would be more convenient to take action on a UK basis, rather than Scotland separately having to implement the obligations. The Scottish executive has been less enthusiastic about such suggestion and it remains to be seen what Westminster will legislate.¹¹¹

3. The Representation of sub-state entities beyond the national borders

What I have examined until now, is how the sub-state entities participate in the international arena by concluding ententes and international agreements, taking part in the foreign policy making of the central government and implementing treaties concluded by the State. What remains to be seen is how their *ius legationis* i.e. their right for autonomous external representation is foreseen within those multilevel constitutional orders. Clearly, compared to how their *ius tractandi* is enhanced by the respective national constitutional frameworks, States have been more hesitant to provide for a sub-national constitutional space that would allow effective autonomous external representation of the regional tier. The reason being that most of the sovereign States consider international representation as part of their exclusive domain. In that sense, there are very few European regions as active as Quebec which has international representation in more than twenty-five countries boasting seven “general delegations” (Brussels, London, Paris, Mexico City, Munich, New York City, and Tokyo), five “delegations” (Boston, Chicago, Atlanta, Los Angeles, and Rome), as well as more than a dozen smaller units, including immigration and tourism offices (Lecours 2010:33).

The main European exception to this rule seems to be the Belgian sub-state entities that may even appoint their own ‘diplomatic’ representatives abroad autonomously. However, this right is not unfettered. It is the Belgian federal Minister of Foreign Affairs who places the ‘attachés’ (today upgraded to the higher position of “conseiller”) of the regions and communities on the diplomatic lists of the Belgian embassies (Criekemans 2010: 48). Still, the sub-state entities of Belgium ‘have the option of designating their own representatives abroad, whether as part of, or separately from, the diplomatic and consular



posts of the Belgian State' (Paquin 2010: 176). In fact Flanders has even become an 'associate member' of a multilateral organization, the World Tourism Organisation (Crickemans 2010).

The extensive rights for autonomous representation in the international arena of Belgian sub-state entities are pretty unique within the European constitutional landscape and undoubtedly their Austrian, German, Italian, Spanish and UK counterparts do not enjoy similar ones. This does not mean, of course, that they do not represent themselves in the international arena at all. For instance, there is a total of 130 representations and offices of all German *Länder* abroad (Nagel 2010: 125) while Scotland has representative offices in Brussels, USA and China and a network of nineteen Development International offices in three macro-regions: Asia-Pacific, Middle East and Africa and North America (Jeffery 2010: 115). However, all this thriving activity is not so much a by-product of constitutional structures but rather a result of political initiatives.

Despite that, there is an area of sub-state activities beyond the national borders that is regulated both by supranational and –more importantly for our purposes- national constitutional law: the participation of the sub-national units to the EU decision-making processes. Overall, we can note that despite the complexity of the institutional framework that allows the representation of the regional interests in the EU decision-making processes, the EU affairs have been the main template of discussion about foreign relations (Requejo 2010). In other words, the autonomous external representation of most of the European constituent units takes place within the Union order. For this reason, we will focus on the relevant legal framework for the representation of the sub-state interests at the EU sphere as the prime example of representation beyond national borders.

3.1 The Representation of the regional interests at the EU

3.1.1 Council

One of the first steps the EU did to respond to the gradual regionalisation process that many EU Member States were undergoing was the opening-up of the Council of Ministers to representatives from sub-state entities. Indeed, the Maastricht Treaty amended the then Article 146 TEC, dropping the reference to national governments. The new wording allowed Member States to be represented in Council sessions by members of regional authorities. It is difficult to overstress the constitutional significance of this



amendment that has survived all subsequent Treaty modifications. However, it is quite interesting to note that the political science literature is divided on the usefulness of such a provision for regions to represent their Union interests (Tatham 2010: 59). Recently it has been argued that such a tool can allow regions to represent distinctive interests at a crucial stage in the EU policy process (Tatham 2008: 499-502).

Be that as it may, Article 16(2) TEU provides that '[t]he Council shall consist of a representative of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote.' It is not prescribed to which internal level of the government that representative shall belong. Thus, even Ministers from regional governments are allowed to represent their Member States if the internal constitution so provides. In addition, pursuant to Article 5.3 of the Council's rules of procedure 'officials who assist them' may accompany the members of the Council.^{LIII} There is no legal requirement that the official should originate from the same government as the representative. Hence, it is possible to have mixed delegations of federal and regional minister.

However, in the composite Union constitutional order one has to examine the national constitutional framework to appreciate the importance of this provision. Indeed, it seems that only a small number of regional authorities can benefit from this arrangement. The usual suspects comprise the sub-state entities of the three federations, the Italian regions and autonomous provinces of Trento and Bolzano, the Spanish Autonomous Communities and the UK devolved governments.

Starting with Austria, the relevant provisions may be found in Article 23d. According to this provision, if the EU subject matter concerns the legislative powers of the *Länder*, there are two options. The first option entails Austria to be represented in the Council by a federal minister who is bound to the opinion of the *Länder*. In fact s/he 'may deviate therefrom only for compelling foreign and integration policy reasons.'^{LIV} Paragraph 3 of the same Article, however, offers the federal government a second option to authorise a representative from the *Länder* to be present in the Council on Austria's behalf. This representative is bound by the common position of the *Länder* as expressed in a decision by the 10 *Länder* Prime Ministers (*Landeshauptleutenkonferenz*). In the Council meeting he has to consult the competent federal minister who sends an associate to the representative into the Council meeting.^{LV}



With regard to Germany, representation in the Council depends on the issue at stake. Article 23(6) of the German Basic law provides that if the EU subject matter predominantly lies in the legislative powers of the *Länder* a member appointed by the *Bundesrat* may represent Germany.^{LVI} This minister usually has the mandate for a certain time (1-3 years).^{LVII} In practice, Germany's representation by a regional minister designated by the *Bundesrat* is exceptional. In fact, under the federal reform of 2006, their exclusive right to speak for Germany is now restricted to education, culture and broadcasting (European University Institute 2008: 148).

The Belgian sub-state entities may also represent the federation in the Council. The framework, however, is more sophisticated and finely tuned than the ones in Germany and Austria. Following the constitutional reforms of the early 1990s, a Cooperation Agreement was drawn up in 8 March 1994 between the federal government and the regions and the communities. The Agreement lays down the representation and the coordination of the Belgian position in the Council and is based on three principles: consensus, mixed delegation and rotation. It was amended in 2003 following the regionalisation of agriculture and fisheries.^{LVIII} As far as representation of such commonly agreed positions is concerned, the 1994 Agreement distinguished four categories. Category I concerns all Council topics which relate to the exclusive federal competences. Category II deals with issues the dominant share of which are a federal subject matter while Category III with those the dominant share of which are of interest to the sub-state entities. Category IV includes Council topics that touch exclusively on the competences of the sub-state entities. In Category I, Belgium is represented by the federal government while in Category IV by a representative from the sub-state entities. In the latter case, the sub-state entities decide together who represents them. In Categories II and III, a system of 'assistance' applies. The delegation is headed by a member of the government which has a dominant share, with an assistant being a member of the government which has the non-dominant share. The head of the delegation votes whereas the 'assistant' politically controls his behaviour and has the right to speak. Finally, the 2003 Cooperation Agreement added two more categories. Category V concerns Council configurations that touch upon the competences of one regional government. In fact this Category refers only to the competence of Flanders with regard to fisheries. Unsurprisingly, in that case, the Flemish government represents Belgium. Category VI, finally, refers to exclusive regional competences but with the federal



government taking the lead. This only applies to Agriculture (Sciumbata 2005: 113-115). It is worth mentioning that similar Cooperation Agreements as the ones of 1994 and 2003 have been signed between the federal level and the sub-state entities with regard to the Belgian representation in a number of international organisations (Paquin 2010: 176).

But as we mentioned above, apart from the regional tier of the three federations, the sub-state entities of the three regionalised States namely Italy, Spain and the UK have also benefited from this arrangement. Under Article 5 of Law No. 131/2003, Italian regions can participate in the work of the Council of the EU and its working groups and can work with the Commission and its expert committees in areas of regional legislative competence, following agreement in the *Conferenza Stato-Regioni* (Bilancia et al. 2010: E-142). Moreover, in March 2006 the government and the sub-state entities signed an agreement which provides among else that Italy may be represented by a regional official in the Council. However, this may take place after an agreement is reached within the framework of the *Conferenza Stato-Regioni* (Bilancia et al. 2010: E-142).

In Spain, the culmination of efforts begun in the 1990s resulted in an agreement concluded on 9 December 2004 which allows the participation of the Autonomous Communities in the Council in four configurations: Employment, Social Policy, Health and Consumer Affairs; Agriculture and Fisheries; Environment; and Education, Youth and Culture (D'Atena 2005: 17). According to this Agreement concluded by the CARCE, the relevant sectoral conference designates one Autonomous Community to represent all in the forthcoming period. This Autonomous Community then seeks agreement of the others on the common position and with the delegation of Spain, and attends the Council (European University Institute 2008: 286).

Finally Ministers from the three devolved administrations (Scotland, Wales and Northern Ireland) are allowed to attend the Council by agreement with the UK government.^{LIX} It is the lead UK Minister, however, who decides on the composition of the UK team, taking into account that the devolved administrations should have a role to play 'in meetings of the Council of Ministers at which substantive discussion is expected of matters likely to have a significant impact on their' competences.^{LX} It is the head of the delegation who, also, has the overall responsibility for the negotiations and agrees to Ministers from the devolved administrations speaking for the UK.^{LXI} The Concordat clarifies that 'they would do so with the full weight of the UK behind them' because the



positions to be taken within the Council would have been agreed in advance at the relevant Joint Ministerial Committee.^{LXII}

3.1.2 The European parliament

Despite its importance for the democratic life of the Union, the academic literature has largely overlooked the role of the European Parliament as a channel for regional representation in the EU political structure. The reason for that might be found in the fact that the constituency to elect MEPs in the vast majority of the Member States is a single State constituency. It is only in Belgium, France, Italy, Ireland and the UK that the MEPs are elected on the basis of regional constituencies. In those cases, however, it could be argued that the regional tier is indirectly represented in the political life of the Union (Tatham 2008: 504-506).

3.1.3 The Committee of the Regions

Established in 1994, the Committee of the Regions is an EU advisory body. On a proposal from the Commission, the Council unanimously determines the composition of this political Assembly whose members may not be more 350. However, it is the Member States themselves that decide their representatives in the Committee. The only sufficient and necessary condition that the Treaties provide is that the members of that body should be ‘representatives of regional and local bodies who either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly.’^{LXIII} This has allowed the States to adopt very different approaches to the rules concerning their representation. For instance, with regard to the form, while in Austria there is a constitutionally enshrined rule concerning the representation of the Federation to the Committee,^{LXIV} in Belgium, Germany and Ireland, the rules consist of legislation, in Italy of regulations and in Spain and Portugal the appointment of the members of the delegation is by means of parliamentary resolutions that are not legislative (D’Atena 2005: 20-21). But also with regard to which level of administration actually represents the Member States, the diversity cannot be overstressed. More specifically, delegations from federal or regionalised States such as the three federations, Spain and Italy are predominantly regional while in



non-regionalised such as the Netherlands, Sweden, Denmark Luxembourg and Ireland the representatives come exclusively from local authorities (D'Atena 2005: 20-21).

Be that as it may, it seems that the Committee of the Regions provides for a *forum* through which the sub-state entities can exert influence in the EU decision-making processes. So, the obvious question to be made is in which policy areas this advisory body consults the European Parliament, the Council and the Commission. The answer seems to be when the Treaties so provide and in all other cases that one of those institutions considers it appropriate.^{LXV} Generally speaking, though, the Treaties provide for the consultation of the Committee in the areas of transport,^{LXVI} employment policy,^{LXVII} social policy,^{LXVIII} the European Social Fund,^{LXIX} education and youth,^{LXX} vocational training,^{LXXI} culture,^{LXXII} trans-European public health,^{LXXIII} infrastructure networks,^{LXXIV} economic and social cohesion,^{LXXV} the environment^{LXXVI} and energy.^{LXXVII}

However, the Committee of the Regions can influence the shaping of the EU constitutional order by some other means as well. According to the Lisbon Treaty, it can also bring annulment procedures before the CJEU 'for the purpose of protecting its prerogatives.'^{LXXVIII} This right of direct access to the Court is further elaborated in the Subsidiarity Protocol. Article 8 provides that it can bring 'actions against legislative acts for the adoption in which the [TFEU] provides that it be consulted.' It remains to be seen when this institution will exercise such right.

3.1.4 The regional representations and liaison offices

To complete the picture of the representation of the regional interests in the EU decision-making processes, we have to briefly refer to the regional representation and liaison offices in Brussels. It is important to mention them because they play a crucial role for disseminating and exchanging information on EU policy issues and they are considered to be a proof of the Europeanisation of regions and the emergence of a third level in the EU arena (Magone 2003: 11).

As a starting point we note that they have mushroomed since the first ones were set up in the mid 1980s. At present there are over 250 such offices (European University Institute 2008: 41). They vary both in terms of the authorities they represent but also with regard to the legal basis in accordance with they are set up (D'Atena 2005: 40-41). As for



the first, while some of them are offices of single regional authorities, others represent an association of regional governments and others represent even cross-border regions (European University Institute 2008: 42). Concerning their legal basis, it suffices to note that some are set up by law, others are governed by public law as public bodies and others are privately run as associations. It seems that the national legal frameworks have progressively become more lenient to their existence. A good example of this point is the fact that the Spanish Government had challenged before the Constitutional Court the right of the Basque country to have a delegation in Brussels ‘alleging that there could be no relation whatsoever between the Basque public institutions and the European institutions.’ (Bengoetxea 2005: 54) However, the Court by its judgment 165/1994 rejected the argument of the government and held that Union law is internal law and affects the competences of the Autonomous Communities (Peres Gonzalez 1994: 94).

4. Conclusion

In this article, I have reviewed the constitutional frameworks that have allowed for the creation of a ‘subnational constitutional space’ that enables the European sub-state entities to be active in the international arena. I did so, by reviewing in the first part the treaty-making competences of the sub-state entities, the mechanisms for their participation in the national foreign policy-making and the provisions concerning the implementation of international obligations within the various constitutional orders. The analysis showed that almost all component units with legislative competences possess some treaty-making powers. Such treaty-making powers might be subject to consent by the State or limited to areas that fall within the competences of the sub-state level or even only allowing them to conclude cooperation agreements. However, such important competences exist and the sub-state entities have been exercising them. In addition, the States have established mechanisms for involving the regional tier in national foreign policy-making either through upper chambers or Interregional and joint national-regional bodies. It is indeed difficult to exactly assess how effective those mechanisms have been in allowing the regional tier to influence the national foreign policy making but they definitely offer such opportunity. Finally, I have shown that within constitutional orders where the sub-state entities enjoy



legislative powers, responsibility for the implementation of international obligations is shared between the ‘centre’ and the autonomous authorities.

In the second part, I focused on how the ‘*ius legationis*’ of the sub-state entities is foreseen in multi-level constitutional orders. Here the picture is more mixed, given that the States have proved more hesitant to provide for an extensive ‘subnational constitutional space’ with the exception of Belgium whose sub-state entities may even appoint their own ‘diplomatic’ representatives abroad autonomously. Despite this, the regional tier is progressively more active in the EU sphere given that it enjoys participatory rights in various EU *fora* including the Council of Ministers. This is largely a by-product of both supranational law and national constitutions. And in that sense, the EU affairs are the real template of discussion about the foreign relations of sub-state entities.

Overall, this comparative exposé of the national constitutional frameworks and the practices of the sub-state entities question this traditional idea that States enjoy a monopoly in the area of foreign affairs. In today’s world, there is space for an active constituent diplomacy and the national constitutional frameworks have to a certain extent responded accordingly.

^I In this contribution, we will use interchangeably the terms ‘constituent diplomacy’, ‘paradiplomacy’, ‘sub-state diplomacy’ to refer to the phenomenon of the participation of the sub-state entities to the international affairs.

^{II} See for example Regulation (EC) No 1082/2006 of the European Parliament and of The Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) [2006] OJ L 210/19.

^{III} Art 16(2) of the Austrian Constitution.

^{IV} Art 16(3) of the Austrian Constitution.

^V Art 24(1a) of the German Basic Law.

^{VI} Art 5 of Regulation 1082/2006.

^{VII} Recital (11) of Regulation 1082/2006.

^{VIII} See for example Art 32(1) of the German Basic Law.

^{IX} *Conférence interministérielle de politique étrangère/Interministeriële Conferentie voor het Buitenlands Beleid*.

^X Art 117(9) of the Italian Constitution.

^{XI} Art 147 of the Spanish Constitution.

^{XII} Art 149 of the Spanish Constitution.

^{XIII} Arts 93, 94 and 96 of the Spanish Constitution.

^{XIV} Art 68 of the Statute of Autonomy of Andalusia; Arts 6, 50 and 127 of the Statute of Autonomy of Catalonia; Art 1 of the Statute of Autonomy of Galicia

^{XV} Art 6 of the Statute of Autonomy of Andalusia; Art 8(3) of the Statute of Autonomy of Asturias; Art 13 of the Statute of Autonomy of Catalonia; Art 6(5) of the Statute of Autonomy of the Basque Country; Art 3(3) of the Statute of Autonomy of Extremadura; Art 7 of the Statute of Autonomy of Galicia.

^{XVI} Arts 220 and 245 of the Statute of Autonomy of Andalusia; Art 197 of the Statute of Autonomy of



- Catalonia; Art 62 of the Statute of Autonomy of Valencia.
- ^{xvii} Spanish Constitutional Court, *sentencia* no. 31/2010.
- ^{xviii} See section 3 of Schedule 2 of the Northern Ireland Act 1998; section 7 of Schedule 5 of the Scotland Act 1998.
- ^{xix} Art 23d⁽¹⁾ of the Austrian Constitution.
- ^{xx} Art 23e(1) of the Austrian Constitution.
- ^{xxi} Art 44(2) of the Austrian Constitution.
- ^{xxii} Art 23d(2) of the Austrian Constitution.
- ^{xxiii} Arts 23d(2) and 23e(6) of the Austrian Constitution.
- ^{xxiv} BGBI. 775/1992.
- ^{xxv} Article 23(4) of the German Basic Law.
- ^{xxvi} Article 23(5) of the German Basic Law.
- ^{xxvii} *Ibid.*
- ^{xxviii} Article 79 of the German Basic Law.
- ^{xxix} Samenwerkingsakkoord van 8 maart 1994 tussen de Federale Staat, de Gemeenschappen en de Gewesten en het Verenigd College van de Gemeenschappelijke Gemeenschapscommissie, met betrekking tot de vertegenwoordiging van het Koninkrijk België in de ministerraad van de Europese Unie (Belgisch Staatsblad, 17 november 1994).
- ^{xxx} Art 5(5) of the Law No. 11/2005.
- ^{xxxi} Art 149(1)(3) of the Spanish Constitution.
- ^{xxxii} Arts 93, 94 and 96 of the Spanish Constitution.
- ^{xxxiii} Art 240 of the Statute of Autonomy of Andalusia; Arts 41 and 97 of the Statute of Autonomy of Aragon; Art 34(3) of the Statute of Autonomy of Asturias; Art 102 of the Statute of Autonomy of the Balearic Islands; Art 20(5) the Statute of Autonomy of the Basque country; Art 37(1) the Statute of Autonomy of the Canary Islands; Arts 187 and 191 of the Statute of Autonomy of Catalonia; Art 33(1) of the Statute of Autonomy of Madrid; Art 12(2) of the Statute of Autonomy of Murcia; Art 68 of the Statute of Autonomy of Navarre; and Arts 22 and 62 of the Statute of Autonomy of Valencia.
- ^{xxxiv} Arts 240 to 243 of the Statute of Autonomy of Andalusia; Art 97 of the Statute of Autonomy of Aragon; Art 102 of the Statute of Autonomy of the Balearic Islands; Art 6(5) the Statute of Autonomy of the Basque country; Art 6 of the Statute of Autonomy of Cantabria; Art 7 of the Statute of Autonomy of Castille-La Mancha; Art 6 of the Statute of Autonomy of Castille-Leon; Arts 195 to 197 of the Statute of Autonomy of Catalonia; Art 3(3) of the Statute of Autonomy of Extremadura; Art 7(2) of the Statute of Autonomy of Galicia; and Art 62 of the Statute of Autonomy of Valencia.
- ^{xxxv} Art 102 of the Statute of the Balearic Islands; Arts 185 to 187 of the Statute of Autonomy of Catalonia; and Art 62 of the Statute of Autonomy of Valencia.
- ^{xxxvi} See Points 3, 17-20 of the Memorandum of Understanding and B1.2, B1.4, B2.2, B2.4, B3.2, B3.4, B4.2 and B4.3 of the Concordats on Coordination of European Union Policy Issues (Cm 5240, December 2001, Memorandum of Understanding and Supplementary Agreements Between the United Kingdom Government Scottish Ministers, the Cabinet of the National Assembly for Wales and the Northern Ireland Executive Committee).
- ^{xxxvii} See Points 17-20 of the Memorandum of Understanding and B1.2, B1.4, B2.2, B2.4, B3.2, B3.4, B4.5 to B4.11 of the Concordats on Coordination of European Union Policy Issues (above n 20).
- ^{xxxviii} *Ibid.*
- ^{xxxix} Case C-107/96 *Commission v Spain* [1997] ECR I-3193, para 10; Case C-323/97 *Commission v Belgium* [1998] ECR I-4281, para. 8.
- ^{xl} Art 16(4) of the Austrian Constitution.
- ^{xli} BGBI. I Nr. 3/2001.
- ^{xlii} Arts 30, 70 and 83 of the German Basic Law.
- ^{xliii} Art 169 of the Belgian constitution.
- ^{xliv} Art 16(3) of the Special Law of 8 August 1980 on Institutional Reform, as amended by the Special Law of 5 May 1993 on the International Relations of the Communities and Regions.
- ^{xlv} Arts 240 to 243 of the Statute of Autonomy of Andalusia; Art 97 of the Statute of Autonomy of Aragon; Art 12 of the Statute of Autonomy of Asturias; Art 102 of the Statute of Autonomy of the Balearic Islands; Art 20(3) of the Statute of Autonomy of the Basque country; Art 37(2) of the Statute of Autonomy of the Canary Islands; Art 34 of the Statute of Autonomy of Castille-La Mancha; Art 28(7) of the Statute of



Autonomy of Castille-Leon; Arts 195 and 196 of the Statute of Autonomy of Catalonia; Art 9(1) of the Statute of Autonomy of Extremadura; Art 33(2) of the Statute of Autonomy of Madrid; Art 12(2) of the Statute of Autonomy of Murcia; Art 58(2) of the Statute of Autonomy of Navarre; Art 62 of the Statute of Autonomy of Valencia.

^{XLVI} CTR 79/1992

^{XLVII} CTR 118/96 and 61/1997.

^{XLVIII} D4.8 of the Concordats on International Relations and B4.16 of the Concordats on Coordination of European Union Policy Issues (Cm 5240, December 2001, Memorandum of Understanding and Supplementary Agreements Between the United Kingdom Government Scottish Ministers, the Cabinet of the National Assembly for Wales and the Northern Ireland Executive Committee).

^{XLIX} B1.4, B2.4, B3.4 and B4.17 of the Concordats on Coordination of European Union Policy Issues (above n 63).

^L Point 21 of the Memorandum of Understanding (n 63).

^{LI} B4.25 of the Concordat (n 63).

^{LII} For an analysis see <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/45321.aspx>

^{LIII} Art 5(3) of the Annex of Council Decision of 1 December 2009 adopting the Council's Rules of Procedure (2009/937/EU) [2009] OJ L325/35.

^{LIV} Art 23d(2) of the Austrian Constitution

^{LV} Art 23d(3) of the Austrian Constitution.

^{LVI} Art 23(6) of the German Basic Law.

^{LVII} Further details can be found in the Law of 12 March 1993 on co-operation of the Federation and the Federated State in EU affairs (BGB1. 1993 I, 313).

^{LVIII} Samenwerkingsakkoord van 13 februari 2003 tussen de Federale Staat, de Gemeenschappen en de Gewesten tot wijziging van het samenwerkingsakkoord van 8 maart 1994 tussen de Federale Staat, de Gemeenschappen en de Gewesten met betrekking tot de vertegenwoordiging van het Koninkrijk België in de ministerraad van de Europese Unie (Belgisch Staatsblad, 25 februari 2003).

^{LIX} Point B4.14 of the Concordats on Coordination of European Union Policy Issues (n 20).

^{LX} *Ibid* B4.13.

^{LXI} *Ibid* B4.14.

^{LXII} *Ibid*.

^{LXIII} Art 300(3) TFEU.

^{LXIV} Art 23c(1) of the Austrian Constitution.

^{LXV} Art 307(1) TFEU.

^{LXVI} Arts 90-100 TFEU.

^{LXVII} Arts 145-150 TFEU.

^{LXVIII} Arts 151-161 TFEU.

^{LXIX} Arts 162-164 TFEU.

^{LXX} Art 165 TFEU.

^{LXXI} Art 166 TFEU.

^{LXXII} Art 167 TFEU.

^{LXXIII} Art 168 TFEU.

^{LXXIV} Arts 170-172 TFEU.

^{LXXV} Arts 174-178 TFEU.

^{LXXVI} Arts 191-193 TFEU.

^{LXXVII} Art 194 TFEU.

^{LXXVIII} Art 263(3) TFEU.

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