

### European governance: common concerns vs. the challenge of diversity

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## MPIfG Working Paper 01/6, September 2001

### European Governance: Common Concerns vs. The Challenge of Diversity\*

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#### Abstract

The text is a comment on the White Paper on "European Governance" presented by the European Commission (COM[2001] 428, 25.7.2001). It begins by confronting the Commission's emphases with the governance problems that it fails to address, including the unresolved difficulties of economic-policy coordination among EMU member states, the adjustments of governance practices required by Eastern enlargement and, above all, the challenges implied by the fundamental shift of the European agenda - from the problems of achieving economic integration to the problems of coping with the consequences of economic integration.

The primary proposals of the White Paper - reducing the involvement of the Council and the European Parliament in "details" of legislation and strengthening the role of the Commission at the expense of member states - would exceed the legitimacy of European institutions and they would also reduce the problem-solving capacity of European governance. European policy must be consensual if it is to be effective and legitimate. Hence it cannot short-circuit the efforts to achieve agreement among member states, even though it is increasingly confronted with problems for which uniform, Europe-wide solutions are not acceptable. Regrettably, the White Paper does not seem to be sufficiently interested in two modes of governance - "closer cooperation" and "open coordination" - that seem to have the potential for improving both the effectiveness and legitimacy of European policy in the face of continuing diversity.

#### Zusammenfassung

Der Text kommentiert das Weißbuch der Europäischen Kommission zu Fragen der "European Governance" (KOM[2001] 428, 25.7.2001). Eingangs werden die Vorschläge der Kommission den Problemen des europäischen Regierens gegenübergestellt, die das Weißbuch nicht behandelt. Dazu gehören u.a. die ungelösten Probleme der Koordination der nationalen Wirtschaftspolitik unter den Bedingungen der Währungsunion und die Probleme einer im Zuge der Osterweiterung erforderliche Differenzierung des europäischen *Acquis*. Vor allem aber fehlt jede Auseinandersetzung mit der grundlegenden Änderung der Anforderungen an die europäische Politik - von der Vollendung der wirtschaftlichen Integration zur Bewältigung ihrer Folgeprobleme.

Die Vorschläge des Weißbuchs laufen darauf hinaus, die Rolle des Ministerrats und des Europäischen Parlaments auf die Festlegung von Grundsätzen zu beschränken und die Rolle der Kommission auf Kosten der Mitgliedstaaten wesentlich zu stärken. Eine Umsetzung dieser Vorschläge müßte jedoch die Grenzen der Legitimation der europäischen Institutionen überschreiten und zugleich die Problemlösungsfähigkeit der europäischen Politik vermindern. Die Union könnte die Suche nach einvernehmlichen Lösungen nicht aufgeben, ohne die Effektivität und Legitimität der europäischen Politik zu untergraben. Sie ist jedoch zunehmend mit Problemen konfrontiert, die nicht mehr durch einheitliche Regeln gelöst werden können. Aussichtsreich wären hier vielleicht zwei neuere Modalitäten der europäischen Politik - "flexible Kooperation" und "offene Kooperation". Sie könnten die Erreichung gemeinsamer Ziele trotz heterogener Bedingungen in den Mitgliedstaaten erleichtern. Leider wird deren Potential im Weißbuch nicht ausreichend gewürdigt.

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The Commission's White Paper on European Governance [1] is as remarkable for what it says as for what it does not say. In combination, the emphases and the omissions seem to reflect a vision that is defined by the institutional self-interest of the Commission and its opposition to Member States and, at the same time, by a remarkable lack of concern about the real challenges confronting the Union and its Member States. I realize that this may appear to be an unfair judgment since the authors sought to avoid issues requiring amendments of the Treaty that might come on the agenda of the next Intergovernmental Conference (or Constitutional Convention). But even if recommendations were to be limited to changes permissible under the Treaty, they still could have been developed in the context of an unconstrained analysis of the challenges the Union must face.

## 1 The Emphasis

The essential elements of the analysis and the recommendations emphasized in the White Paper can be summarized in a few simple propositions:

- On the whole, European integration is a great success.
- If nevertheless many Europeans "feel alienated from the Union's work" and if the turnout for elections to the European Parliament is decreasing, that reflects a perception of European policy as being either ineffective or excessively detailed and intrusive.
- Much of this is a problem of either poor public relations or intentional misrepresentation: "Where the Union does act effectively, it rarely gets proper credit for its actions", and "Brussels is too easily blamed by Member States for difficult decisions that they themselves have agreed or even requested."
- To the extent that real difficulties do exist, they can be overcome if the Union is able and willing to "revitalise the Community method" according to which "everyone should concentrate on their core tasks: the Commission initiates and executes policy; the Council and the European Parliament decide on legislation and budgets ... and the European Parliament controls the execution of the budget and of the Union's policies" (p. 29).

Compared to present practices, that would require the following changes:

- Council and Parliament should limit their involvement in "primary" European legislation to the definition of "essential elements ..., leaving the executive" [i.e., the Commission] "to fill in the technical detail via implementing 'secondary' rules" (p. 20) without being bothered by national representatives in management or regulatory "Comitology" procedures (p. 31).
- The Commission on its part would then promote "openness" and transparency by providing more (online) information about all stages of European decision processes; it would promote "participation" by extending its efforts to involve and consult

subnational and local governments, "civil society" and "network-led initiatives" in preparing its legislative initiatives; and it would promote "effectiveness" by collaborating more closely with affected industries, local and regional governments and "civil society" in the implementation of European legislation, and by prosecuting more vigorously national governments that are accused of violating European law.

There is of course more in the text, and much of it is quite reasonable, but this thumbnail sketch seems to capture the essential understanding of the institutional *problématique* and of the strategic vision promoted by the authors of the White Paper. Their significance, however, becomes clear only in relation to the issues which are not discussed at all in the White Paper.

## 2 The Omissions

I leave out the problems which indeed could only be dealt with through intergovernmental negotiations - including those associated with the more effective coordination of foreign policy and the creation and deployment of a substantial rapid deployment force of EU member states, perhaps under conditions of "closer cooperation". I will also exclude those third-pillar problems for which Member States have not yet granted a significant role to the Commission. But that still leaves a wide range of problems that could have been, but were not, considered.

Among them are the difficulties caused by the European Monetary Union. The Irish conflict (which may also have played a role in the referendum on the Nice Treaty) has highlighted the fundamental problems of one-size-fits-all interest rates set by the ECB - which turn out to be much too low for the high-growth Irish economy and much too high for low-growth Germany. It would have been interesting to read how the Commission sees its role in facilitating fiscal-policy coordination under conditions of economic diversity. Should there be effective sanctions against Ireland? Or should each EMU Member State be allowed to struggle on its own with the consequences of a common monetary policy that does not fit the national economy - even if that has external effects on average Euro rates of inflation?

But interesting as these questions may be, they are overshadowed by the omission of the problems of Eastern enlargement. Here, my concern is not with the necessary changes of EU decision-making structures (that were messed up, rather than resolved, at Nice) or with the determination and allocation of financial burdens which, again, can only be handled by intergovernmental bargaining. It is with the Commission's role in imposing the *acquis* on new Member States that had no voice in its definition and whose economic and social conditions differ fundamentally from those of the Member States from whose self-interested bargains these rules had emerged. If they are enforced with all the legalistic determination of which the Commission and the Court are capable, the fragile economies of new Member States will be destroyed just as the East German economy was destroyed when the *acquis* of the West German legal order was imposed and enforced without modification. How this consequence could be avoided without triggering domino effects throughout the EU legal system is a question that ought to cause sleepless nights to some people in Brussels - but not, apparently, to the authors of the White Paper.

But, then, the White Paper is generally not interested in discussing the substantive problems confronting the EU and its Member States at the present time - and that is an omission with serious consequences for its definition of governance problems, and even more so for the effectiveness and legitimacy of their proposed resolution. To put the matter

most simply in game-theoretic terms: For the resolution of pure-coordination problems, all modes of governance are effective and legitimate; for zero-sum conflicts, by contrast, only hierarchical authority can ensure a peaceful resolution, and it can do so only if it is supported by very strong legitimacy beliefs among the parties involved in the conflict. By failing to address the substantive challenges facing the EU, the White Paper comes to underestimate the difficulty of the problems that need to be faced and to overestimate the legitimating power of the governance procedures that are proposed.

### **3 The Asymmetric Political Economy of European Integration**

The White Paper rightly celebrates the success of European economic integration - which far exceeds the degree of integration achieved in the international economy that is provoking the present commotion about "globalization". It does not seem to realize, however, that with the completion of the Internal Market and with the creation of the Monetary Union, the nature of problems on the European agenda has changed radically. Economic integration and market liberalization have greatly reduced the capacity of national governments to influence the course of their national economies. At the same time, the legal constraints of "negative integration" and European competition law and the ensuing economic pressures of regulatory and tax competition have drastically reduced the range of economically feasible and legally permissible policy instruments with which Member States could pursue non-economic political purposes or deal with politically salient social or environmental problems. At the national level, therefore, the perceived impotence of governments in the face of urgent demands and manifest crises weakens their political support and must eventually undermine the political legitimacy of Member States. Under these circumstances, it was inevitable that national actors have increasingly come to demand European solutions to the "spillover" problems created by European economic integration. As it turns out, however, these demands are largely frustrated by a basic asymmetry between market-creating and market-correcting policies at the European level.

Market integration, though never completely conflict-free, was a shared goal that by and large could be realized through Europe-wide and uniform rules of negative integration, liberalization and harmonization. Many of these policies could be imposed unilaterally by the Commission and the Court in their roles as "guardians of the Treaty" and enforcers of the maxims of "undistorted competition" or, where they depend on Council directives, they could count on the support of producers and consumers in all Member States who expected to benefit from access to the larger European market. By contrast, market-correcting European regulations are as likely to be opposed by business interests as is true at the national level. Moreover, the social-protection and environmental interests that would often prevail over business interests nationally are less well represented in European bargaining processes. What matters more, however, is that even where these interests could politically prevail over business opposition, they are likely to be divided at the European level.

One reason is the difference between rich and poor member states: Firms, workers and consumers in Portugal or Greece, let alone in Poland or Hungary, simply could not afford environmental or social standards at a level that Danish or Dutch voters consider essential. Even more important, however, is the divergence of existing welfare-state and industrial-relations institutions and the high political salience of divergent national policy legacies. Voters in Britain simply could not accept the high levels of taxation that sustain the generous Swedish welfare state; Swedish families could not live with the low level of social and educational services provided in Germany; and German doctors and patients would unite in protest against any moves toward a British-style National Health System.

In short, successful European policies of economic integration and market liberalization have resulted in a fundamental asymmetry in the European political economy: Though the pressures of regulatory and tax competition give rise to increasingly urgent demands for more effective market-correcting policies at the European level, agreement on effective European solutions is most difficult precisely for those problems about which the citizens of Member States care the most. The White Paper, unfortunately, gives no indication that its authors are aware of this fundamental change in the dominant *problématique* - and if they were, they certainly did not appreciate its implications for the institutions and procedures of European governance. In fact, if the central recommendations of the White Paper were adopted and applied to the issues discussed here, the outcome would not be effective problem solving but a veritable legitimacy crisis.

#### 4 The Narrow Constraints of European Governance by Majority Rule

Like the proverbial generals who are always fighting the last war, the White Paper's proposals to "revitalise the Community method" make a lot of sense when hypothetically applied to the problems of the past. Economic integration could indeed have been achieved more quickly and more efficiently if Parliament and Council had restricted their involvement to the definition of the "essential principles" of legislation proposed by the Commission, if the Council had been ready to "*vote as soon as a qualified majority seems possible rather than pursuing discussions in the search for unanimity*" (p. 22), and if the Commission would then have been allowed to define the "technical detail" without being encumbered by Comitology procedures. When applied to, say, the definition of work-safety standards in the Machinery Directive, or of common rules governing the solvability requirements for insurance companies, legitimacy would not have been much of a problem since the common interest of producers and service providers in gaining access to the larger European market would have ensured the acceptance of any reasonable Europe-wide rule even if national industries and their governments might have preferred differing solutions at the level of "technical detail".

But what if these differences were to have high political salience for national constituencies? Think of recent efforts to reform national pension systems, where even minute technical details could have a significant impact on the life chances of individuals and hence were the object of fierce battles among interest groups and political parties, or would even provoke violent protests that could jeopardize a government's survival. If such issues were indeed to be settled by the "Community method" and majority rule at the European level, the lack of legitimacy could blow the Union apart.

It is worrying that the authors of the White Paper seem to be happily unaware of any legitimacy constraints on European institutions. Thus, they assert twice that their recommendations merely concern the way in which "the Union uses *the powers given by its citizens*" (p. 3, 8), and they are emphatic in postulating that "it is time to recognize that the Union has moved *from a diplomatic to a democratic process...*" (p. 29). The first of these statements is of course not even a self-serving euphemism. It is simply wrong. The powers the Union is able to exercise were either delegated by the governments of Member States or they were usurped by the Commission and the Court through interpretations of Treaty provisions that exceeded the original intent of contracting governments. Whether, and in what way, "citizens" should finally get a say in all this is a question considered with much fear and trembling (even more so after the Irish referendum) in the beginning debate on a European "Constitution". For the time being, at any rate, the powers of the Union rest on intergovernmental agreement and a passive respect for "the law" - neither of which are

solid rocks to stand on if European policies should violate intense national preferences.

The same objection would have to be raised against the White Paper's reference to "a democratic process" if that should imply majority rule. Voting by qualified majority has become a useful device for speeding up Council decisions in constellations where the divergence of policy preferences does not have high political salience in national constituencies. When that is not the case, however, member governments have very good practical and normative reasons to invest time and effort in the search for consensual solutions. On practical grounds, the shadow of the future is long, and governments should hesitate to antagonize others when they may find themselves in the same corner tomorrow. On normative grounds, moreover, legitimate majority rule would presuppose a strong European collective identity, vigorous Europe-wide public debates, and the manifest political accountability of European governors. None of these preconditions is as yet realized in the present European Union, let alone in the Union after Eastern enlargement. That is not meant to discourage efforts that would gradually create the preconditions of democratic legitimacy and majority rule at the European level. For the time being, however, Europe cannot operate as a majoritarian democracy, and European policy must be consensual if it is to be legitimate.

## 5 The Heroic Commission

However, the main emphasis in the White Paper is not on majority rule and the democratization of the Union; it is on enlarging the role of the Commission at the expense of the roles of governments of the Member States. Nevertheless, some of the practical and normative objections just mentioned apply here as well. The critical proposal would restrict the legislative role of the Parliament and the Council to a definition of "essential principles", and then leave the specification of "technical detail" to the unfettered discretion of the Commission. Given the diversity of economic conditions, political cultures, institutional structures, policy legacies and public attention among Member states, it seems inevitable that many policy choices below the level of "essential principles" will have high political salience and might be totally unacceptable in one country or another. At present, these pitfalls are avoided by the search for consensual solutions that avoid incompatibilities with specific national constraints in elaborate intergovernmental negotiations that take place in the preparatory phase before a Council decision as well as in the implementation phase.

In the preparatory phase, this search is carried on in the multitude of specialized committees organized by the Council Secretariat whose deliberations are then fed into the Committee of Permanent Representatives (COREPER), where most potential conflicts among member governments are ironed out before they reach the Council agenda. The White Paper, however, proposes that the Commission should protect the integrity of its legislative initiatives by withdrawing them whenever the outcome of "inter-institutional bargaining would undermine ... the proposal's objectives" (p. 22). In other words, the Commission is threatening to use its Treaty-based monopoly of legislative initiatives in order to short-circuit consensus-seeking procedures and to confront the Council and the Parliament with take-it-or-leave-it propositions.

Of equal importance is the phase of "implementing" Council decisions that need further specifications before they can be directly applied. This function could be performed by the Council itself, it may be delegated to the Commission, or it may be left to Member States. In practice, delegation to the Commission has become the preferred procedure, but it is generally combined with the establishment of a "Comitology" committee in which

regulations proposed by the Commission need to be discussed with civil servants and experts nominated by member governments. In two of the variants of Comitology (which the White Paper would abolish), "management committees" and "regulatory committees" that disagree with a Commission proposal have the possibility of appealing to the Council for a final decision. Even though that option is almost never used in practice, it acts as a "fleet in being" that forces the Commission to take objections seriously and to search for consensual solutions in the implementation phase as well. It is precisely this function that the White Paper proposes to eliminate by abolishing management and regulatory committees (p. 31).

The White Paper is of course right in suggesting that the outcomes of consensus-building procedures leave much to be desired if judged by efficiency criteria. Decision processes are cumbersome and slow, and their outcomes are likely to be sub-optimal in one of two characteristic ways: On the one hand, high aspirations of original Commission initiatives are likely to be watered down because of the need to eliminate provisions that would violate specific national concerns. On the other hand, originally lean Commission drafts may become bloated because of the need to accommodate cumulative requests for the insertion of additional provisions satisfying specific national demands. Moreover, European decision processes tend to be over-specialized and hence poorly coordinated. In short, the European policies produced by consensus-seeking procedures are often of a kind which not even their progenitors could love, and it is also true that the Commission or "Brussels", rather than national governments, generally gets to be blamed for them. It is easy to sympathize, therefore, with the desire of the Commission to liberate itself from these uncomfortable constraints. But it must also be obvious to anybody outside of the Commission that the solution proposed by the White Paper - which would essentially replace consensus-seeking procedures with unilateral powers of the Commission - cannot work in practice and would not be normatively acceptable if it did.

At a practical level, the Commission's threat to withdraw initiatives when they are in danger of being changed by intergovernmental negotiations would backfire if the Council, or even a blocking minority of member governments, would equally reject all Commission initiatives which, in their original form, do not respond to the objections and demands that would otherwise be introduced in consensus-seeking negotiations. In other words, in a decision system with multiple veto positions, confrontation strategies can in principle be played by all parties - and if they are played by all, gridlock is the most likely outcome. By the same token, it is hard to see how the Commission could force Member States to accept the abolition of the Comitology system and to leave legislative choices in the "implementation" stage entirely to its own discretion.

But apart from practicalities, the White Paper's proposals would be problematic from a normative point of view. They would explicitly and visibly destroy what is left of the indirect-democratic legitimation of European policies that is derived from the agreement of democratically elected national governments, and they would do nothing at all to strengthen either the direct responsibility of the European Parliament for substantive policy choices or the political accountability of the Commission to Parliament (assuming, for the sake of argument, that politically salient European policy choices could be legitimated by votes taken in the present EP). In short, the greatly enhanced role of the Commission envisaged by the White Paper is not that of a faithful agent of either the Council or the Parliament. Instead, what the authors have in mind would amount to the creation of a benevolent dictatorship.

To be sure, it is meant to be a well-informed, highly sensitive and very open form of dictatorship. With regard to the preparation of policy initiatives, the White Paper is replete



with promises of more communication, wider involvement, participation and consultation and (in a remarkable reversal of the assignment of principal-agent roles in democratic theory) it even proposes that the Commission should take care that "civil society itself must follow the principles of good governance, which include accountability and openness" (p. 15). In return, the Commission would allow privileged "partnership arrangements" involving "additional consultation" with civil society organizations that conform to its requirements (p. 17) - without, however, committing itself to binding "corporatist" agreements. The list of potential partners the authors have in mind is truly comprehensive, including the Economic and Social Committee, the Committee of Regions, individual regions, cities and localities, trade unions and employers' associations, professional associations, churches and charities, network-led initiatives and grass roots organizations - practically everything and everybody one could think of or wish for if Commission manpower, time and attention were not scarce resources. But since these are in fact extremely scarce resources, one cannot but wonder what would happen if the Commission's invitations were taken seriously by most, or even by many of the "civil-society" actors all over Europe to whom they seem to be addressed. Or, since not a word is lost on the practicalities of Europe-wide participation, one might wonder about the seriousness of the invitation itself.

It is also worth noting, however, that democratically legitimated national governments are not included among the lists of participants whom the Commission intends to consult in the preparation of its legislative initiatives. On the implementation side, the White Paper similarly envisages more intense partnership relations between the Commission and non-governmental organizations. Thus, co-regulation arrangements are supposed to allow "the actors most concerned" (presumably, industrial associations) to take responsibility for the preparation and enforcement of rules within a framework of "binding legislative action". In order to qualify, the organizations participating "must be representative, accountable and capable of following open procedures in formulating and applying agreed rules" (p. 21). Here, however, national and subnational governments (which meet all these criteria, or so one should think) would also get a role in "target-based tripartite contracts" involving a Member State, a regional or local authority and the Commission in which the subnational authority would undertake to realize particular objectives in the implementation of primary legislation (p. 13). In this case, national governments would be held responsible for the implementation of the contract - but there is no question that its terms would be defined by the Commission. Since these target-based contracts would necessarily have to be selective, one wonders what they would do to the integrity of orderly national structures of regional and local government and administration, or what it would cost to bribe national governments into sharing what authority they may have over regional and local governments with the Commission.

None of my comments are meant to deny that the White Paper includes many useful suggestions. What is basically wrong with its vision, however, is the image it projects of the Commission as the lone hero of European policy making and implementation - a role that is reminiscent of French-style executive centralization, but for whose emulation the Commission lacks both legitimacy and institutional capacity at the center and effective control over an efficient administrative infrastructure at regional and local levels. This heroic self-image of the Commission seems to be complemented by a deep distrust of Member States, whose role in policy making and implementation the White Paper seeks to have reduced or bypassed wherever possible. In my view, this reflects not only an inflated image of the Commission's capabilities but also a disturbing lack of understanding of the preconditions of successful multilevel governance in Europe.

## 6 Multilevel Europe: Constraining and Enabling

The White Paper seems to imply that multilevel interactions in the European polity are zero-sum confrontations in which the Commission must try to maximize its role in legislation and implementation at the expense of Member States, and where national governments are continually engaged in blocking, reversing and blaming the Commission. There is reason to think that this confrontational view is a legacy of the dominance of "negative integration" in the history of European integration. Once the basic political commitments to market integration had been adopted in the Treaty of Rome and, again, in the Single European Act, it was for the Commission and the Court, acting as "guardians of the Treaty", to define and to implement the common project; and it was plausible for the Commission to see itself as the taskmaster whose job it was to cajole, blackmail or compel recalcitrant or protectionist Member States to accept the concrete implications of what they had already agreed to in the abstract.

The present European agenda, however, is no longer about the further perfection of uniform rules of market integration. It is about coping with the problems and constraints that the integration of European markets has created for Member States in policy areas which so far have not been Europeanized themselves. These problems are manifest in the societies and economies of Member States, rather than at the European level. Nevertheless, since it is so massively contributing to problems at the national level, Europe is inescapably confronted with expectations that it should also be part of the solution.

These expectations correspond with the historical experience of federal nation states where the growing integration of national economies was going hand in hand with the adoption of uniform social and environmental regulations, welfare-state policies and taxes at the federal level. But such parallels are misleading because, for the reasons discussed above, uniform European rules could not be legitimately imposed on the divergent problems, institutions and policy legacies of EU Member States. If Europe is nevertheless to be part of the solution, it can only be so in an enabling role which must support and strengthen, rather than undermine, the political legitimacy, institutional integrity and problem-solving capacity of its Member States. But what could be done if uniform legislation cannot be the solution? In the present institutional framework of the Union, there are in fact two innovative options - "closer cooperation" and "open coordination" - that might be useful here and whose potential is hardly explored in the White Paper.

### 6.1 Closer Cooperation

The provisions allowing for closer cooperation among groups of Member States did become a bit more practicable under the Nice Treaty. Further changes would be required, however, before it would be possible for groups of countries facing similar problems, that differ from the problems confronting other member states, to make use of the instruments of Community legislation. If that were possible, it would indeed be conceivable that Member States trying to cope with the problems of reforming "Bismarckian" pay-as-you-go public pension systems might develop common solutions even if these would not apply to Member States relying to a large extent on either tax-financed basic pensions or funded public or private pensions. Similarly, Member States with national health systems might benefit from common solutions that would not apply in countries relying on compulsory insurance for the financing of privately provided health care, and vice versa. Moreover, if it were found to be necessary to relax the rigidities of the *acquis* for new accession states after Eastern enlargement, "closer cooperation" could provide common solutions that would not open the flood gates of ad-hoc discretion. It seems puzzling that

the Commission is not actively promoting closer cooperation as an instrument that would accommodate a moderate degree of diversity without relaxing the controls of the "Community method".

## 6.2 Open Coordination

The "open method of coordination" goes much further in accommodating diversity. As it was introduced in the Employment Title of the Amsterdam Treaty (and extended to certain social-policy areas by the Lisbon Summit), the method presupposes that Member States should define certain policy targets as a "common concern" whereas the actual choice of policies remains a national responsibility. What matters is that the policies responding to jointly defined targets are presented in annual "national action plans", that outcomes are evaluated in a permanent committee of senior civil servants, and that on the basis of these evaluations the Council may address specific recommendations to individual Member States. In this, the role of the Commission is important in providing benchmarking information and comparative analyses that identify the relative performance and the specific problems of individual countries as well as national solutions that seem to be particularly successful.

It is of course too early to evaluate the effectiveness of the open method of coordination, but it is clear that it is viewed with a jaundiced eye by the authors of the White Paper. While its usefulness for "allowing Member States to compare their efforts and learn from the experience of others" is acknowledged, the emphasis is clearly on containment: "The open method of co-ordination must not dilute the achievement of common objectives in the Treaty or the political responsibility of the Institutions. It should not be used when legislative action under the Community method is possible" (but why not?) and "the Commission should be closely involved and play a co-ordinating role" (p. 22). Quite obviously, the authors fear that the Commission could lose ground in its turf battle against national governments.

When viewed from a less self-centered perspective, however, the open method of coordination could hold considerable promise. By requiring national governments to focus on a common problem, and to consider their own policy choices in relation to this problem and in a comparative perspective and, even more important, by exposing their performance to peer review and public scrutiny, open coordination should not only provide favorable conditions for "learning through monitoring" (Charles Sable), but it may even provide opportunities for shaming governments out of "beggar-my-neighbor" strategies that would be self-defeating if everybody did adopt them. Contrary to the assumptions of the White Paper, however, the full potential of open coordination may be realized precisely in policy areas where "legislative action under the Community method is possible". I will mention only two plausible applications that come to mind:

First, assume that Council and Parliament would heed the White Paper's injunction to reduce legislation to "essential elements", but that - instead of leaving the formulation of more specific regulations to the Commission and Comitology processes - implementation would be delegated to Member States. Without more, that would correspond to the model of "framework directives" which the White Paper suggests should be used more often (p. 20). If they are not often used in present practice, the reason may be distrust of the protectionist or beggar-my-neighbor practices of Member States, or simply a lack of mutual understanding of the operation of institutionally differing national political and administrative systems. But what if national implementation were coupled with a process of open coordination in which Member States would have to announce what they intend to

do, in which their performance would be monitored by the Commission and evaluated by peer review, and in which more precise Council legislation or decisions in response to manifest problems of deficient implementation would remain a realistic prospect? Under these conditions, the diversity of implementing regulations could increase, rather than undermine, the effectiveness of European legislation.

Or take as a second possibility the implementation of structural funds where the Commission is deeply involved in the processes of defining, selecting and managing programs at the regional and local level - which makes for extremely cumbersome bureaucratic procedures and often wrecks havoc with the integrity of administrative institutions and practices at national and subnational levels. But what if the Union were merely to allocate lump-sum grants to economically disadvantaged Member States while defining broad purposes for which regional subsidies (regardless of their source) should be used? In that case, the effectiveness of national solutions could be monitored through processes of open coordination in which national (or subnational) action plans, benchmarking, peer review and potential Council decisions would take the place of both the present involvement of the Commission in attempts at co-administration and the exceedingly restrictive prosecution of state aids under the rules of European competition law.

If employed "in the shadow of legislation", open coordination could indeed help to resolve some of the most serious problems addressed in the White Paper. It would allow European legislation to avoid the excessive detail which, even though it is product of their own demands, vexes Member State parliaments and administrations even more than it seems to irritate the Commission - and it would do so without requiring the wholesale delegation of legislative competencies to an "executive" (the Commission) that cannot be held politically accountable for its policy choices. Instead, responsibility for those policy choices that cannot or should not be made directly by the "political" institutions of the Union (Council and Parliament) would be left to Member States, where they would become the responsibility of politically accountable national and subnational governments. These policy choices, however, would not be those of sovereign, "Westphalian" nation states. They would be taken in an institutional setting in which "common concerns" are integrated into the preference function of national and subnational actors, and in which the effectiveness of nationally divergent solutions needs to be demonstrated in comparative analyses under conditions of peer review. The Council, moreover, would remain as a fleet in being that could intervene, by decisions taken by qualified majority, against specific deficiencies and the "beggar-my-neighbor" practices of individual Member States.

If these conditions were met, the Europe-wide uniformity of rules and practices would cease to be the litmus test of successful integration, and Member States would not need to march in step to the bark of the Commission's drill sergeant to demonstrate that they are good Europeans. Instead, they could respond to the specific problems they are facing with solutions that are compatible with their specific policy legacies and that can be implemented within their existing institutional framework. At the same time, however, national policy choices would be disciplined by the challenge to achieve jointly defined targets and by the institutionalized need to consider their impact on other Member States. In short, in developing the open method of coordination, the Union may have discovered a constructive approach to dealing with the growing pressure for European solutions under conditions of politically salient diversity.

There is of course no reason to consider these methods a panacea. There is still a need for uniform standards ensuring the access of traded goods and services to the markets of all Member States, and there must also be a place for the centralized enforcement of rules

against protectionist practices that distort economic competition among Member States. At the same time, there is a growing need for the Union to speak and act in a unified and effective way towards the rest of the world, in trade negotiations and development policy as well as in the policy areas included in the second and third pillars of the EU Treaty. But centralization and uniformity are not values in themselves, and the European Union will not be able to cope with its present problems and the difficulties of Eastern enlargement unless it finds ways to realize common concerns while accommodating diversity and respecting the institutional integrity and political autonomy of its Member States in all matters where uniformity and centralization are not necessary or not possible, and which still cannot be left to the unfettered discretion of nationally myopic Member States. It is unfortunate that the White Paper has chosen to ignore these challenges.

## Endnotes

\* This paper is intended for a collection of comments, organized by the [Robert Schuman Centre of the European University Institute](#), Florence, on the Governance White Paper of the European Commission. Helpful suggestions by Gerda Falkner are gratefully acknowledged.

1 Commission of the European Communities, 2001: European Governance. A White Paper. COM (2001) 428 final. Brussels: CEC.

[http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001\\_0428en01.pdf](http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001_0428en01.pdf)


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