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Improving the Effectiveness and
Legitimacy of EU Governance :

A Possible Reform Agenda for the Commission

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Forward Studies Unit



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IMPROVING THE EFFECTIVENESS AND LEGITIMACY OF EU GOVERNANCE

A Review of the Genval Workshop, 21-22 May 1999 and a Possible Reform Agenda for the Commission

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SUMMARY OF KEY RECOMMENDATIONS

- 1.** The European agenda must come to be understood as more relevant by civil society. Specifically acknowledging the proposals made by the Parliament and expressing a willingness to work collaboratively with it, the Commission should seek for ways to assist in widening and deepening public debate on European issues. It should take steps to improve the quality of information reaching the public and to make better use of information emerging from consultation. In taking such steps, it should consider how issues of common concern may be raised simultaneously across national borders and should seek to link the European agenda to developments at the global level. In particular, the Commission should make more judicious use of Green Papers, restricting them to a few issues of real concern to people, using clear language, disseminating them widely and facilitating responses. At the institutional level, as a key symbol of its commitment in this regard, it should support the Parliament's proposal for an independent office for the evaluation of European policies as well as actively encouraging the development of capacities for pluralistic scientific expertise and for prospective studies.
- 2.** The Commission should announce its intention to move towards the systematic development of a policy process characterised by open communication at all stages where the views of affected actors are actively sought and valued. The Commission should initiate an evaluation of emerging innovative mechanisms for representation, participation and consultation in order that current best practice can be built upon. It should then prepare a Green Paper on new forms of representation, participation and consultation with regard to European issues.
- 3.** Recognising that the value of the reforms contemplated in the foregoing recommendations will be reduced in the absence of enforceable rights and obligations, the Commission should initiate debate on a European Charter of Political Rights, a Framework Act codifying common principles for regulatory authorities and on the mechanisms required to implement them, with a view to progress on these issues at the next IGC. As a sign of its own commitment in these respects, the Commission should nominate a Commissioner with responsibility for a Citizens' Europe to encourage wider participation and to oversee the reforms highlighted in the foregoing recommendations.
- 4.** Recognising the pressures on the centralised vertical structure of European policy making, the Commission should evaluate experience with existing developments towards decentralisation and delegation – notably the emergence of European agencies. It should prepare a White Paper to launch debate on decentralisation and to examine options - especially those which assist in the separation of policy from technical functions and those which improve communication among all interested actors by means, for example, of networks. It should also prepare a White Paper on the decentralisation of the management of the European programmes in order that the focus may be on the realisation of their primary objectives rather than predominantly on narrow and formal financial criteria – European Decentralised Public Offices could be a key option for consideration in this regard. The Commission should also take a lead in decentralisation by being prepared to deconcentrate on an ad hoc basis in response to specific needs.

5. In order to contribute towards policy coherence and implementation, the Commission should initiate a systematic appraisal of its present structure in this regard. It should consider adopting cross-evaluation among policy areas on a systematic rather than an ad hoc basis – preferably in tandem with the creation of inter-sectoral poles – and display a greater readiness to deploy Task Forces to deal with horizontal problems.
6. The Commission should establish a Central Regulatory Unit, a Budget Evaluation Unit and a Risk Evaluation Unit. These (together with a Human Resources Policy Unit (see below)) would report directly to the President and operate specifically so as to achieve the coherence and integration of policies. They would ensure that policy proposals had addressed their impact on global priorities and concerns and on other policy areas. They would equally ensure that economic and risk issues had been properly addressed.
7. Recognising the vital role to be played by its personnel in the achievement of necessary reform, the Commission should establish a new Unit under the authority of the President (i) to oversee the development of human resources policy for the new challenges it will face in terms of, for example, greater openness and responsiveness and of better communication and ability to co-operate; (ii) to evaluate the performance of key personnel on the basis of these new criteria so that the new skills and attributes required are developed and rewarded; and (iii) to facilitate the transfer of best practice among DGs. The basic task of this Unit, therefore, will be the establishment of the new administrative culture implied by the reforms contemplated in this paper.

I. INTRODUCTION

The issue of reform is firmly on the agenda of the European Union. At the institutional level, a new IGC will consider the Treaty amendments required if the next step in the process of enlargement is to be successfully completed in the early years of the new Millennium. The larger and more diverse Union in contemplation demands that the issues forming the so-called 'Amsterdam triangle' (the extension of qualified majority voting, the composition of the Commission and the allocation of votes in the Council) as well as other institutional questions (such as those relating to the composition and competence of the ECJ and the extension of the co-decision procedure) be resolved as a matter of urgency. And beyond the question of Treaty amendment Romano Prodi in his recent speeches to the Parliament and to the European Council meeting at Cologne has indicated that the lower level reforms required to carry Europe towards a single economy and a single politics will be key themes of his presidency. Especially as regards the oft-stated desire to bring Europe closer to the citizen, it is likely that these lower level (or 'governance') reforms will have a crucial role to play.

It was with this in mind that the Forward Studies Unit organised a Workshop to consider the question of *improving the effectiveness and legitimacy of EU governance*. The Workshop brought together: Commission personnel concerned with the process of reform; academic experts in such fields as European integration and regulatory reform; and the Member of the European Parliament who prepared the report of the Committee on Institutional Affairs on the participation of citizens and social players in the Union's institutional system (see the attached list of participants).

The Workshop underlined the importance of the institutional reforms that are currently under consideration and expressed confidence that these are being handled adequately by existing processes. It recognised, however, that the Commission in particular faced a significant challenge in the aftermath of the events of March and that a full response to the crisis would require *governance* as well as institutional reforms. It also stressed that there was not a complete separation between these two levels of reform but rather that they should be understood as inter-related. As a consequence, it was seen to be possible that in due course further institutional reforms may be necessary to accommodate evolutions underway at the governance level.

Despite the scale of the challenge facing the new Commission, the Workshop believed that the crisis actually provided it with a unique opportunity to act decisively to enhance European governance. The swift and unanimous response by Member States to the events of March and the significance of the appointment of Mr. Prodi as the new President has not gone unnoticed by the European public. There is an unprecedented degree of expectation that meaningful progress will be made. The poor turn-out at the elections for the European Parliament in June can as much be understood as a wake-up call to the institutions as a sign of voter indifference.

In considering the sorts of governance reforms that should best be made, the Workshop began by returning to first principles to examine the nature of the problems the EU now faces. In so doing, it took note of evolutions already underway especially within the Commission in response to these problems.

The key recommendations emerging from the proceedings of the Workshop are summarised at the beginning of this paper. The following part summarises the diagnosis that was made (chap. II), while the next part presents more thoroughly and justifies the recommendations (chap. III). Annexed to this paper are : the discussion paper distributed before the Workshop (annex 1); the introductory presentation (annex 2); the list of participants (annex 3); and the list of the background papers (annex 4).

II. DIAGNOSIS

GENERAL BACKGROUND

There is widespread recognition of the relevance of the European project when it comes to addressing global challenges such as sustainable development, North-South inequalities and related reforms of the international system. There is equally a desire for more European action in the field of common foreign and security policy (most recently manifested in relation to the Balkans) and with regard to issues such as migration and refugees, international crime, and so on. In each case, it is understood that concerted action at a level beyond the nation state is required if desired ends are to be achieved.

And yet the public perception of European action is often negative. This can be due to the fact that the debate on European issues is often heavily skewed by the interests of national politics, with European action being portrayed as 'unnecessary interference' in more and more areas of daily life. But it is also due to the fact that to a great extent the 'democratic deficit' has not yet been successfully addressed despite the express intentions of the framers of both the Maastricht and Amsterdam Treaties. Decision-making at the European level is all too often an opaque and confusing process which even experts struggle to comprehend and which leads to a situation where it is easy for European action to be portrayed as not being properly accountable.

Meanwhile, the public increasingly feels that their lives are being shaped by forces which appear to be outside the control of political actors whether at the national, European or even international level. Recent problems such as the Asian crisis and a seemingly endless succession of food safety scares only add to the widely-held impression that the globalised economy and technological systems are following their own logics irrespective of the needs of individuals and despite the interventions of political actors. As a consequence, the political reliance on scientific and other expertise that has been a feature of the post-war era is increasingly called into question and doubts are expressed about 'technical solutions' which supposedly obviate the need for wider debate.

Closer scrutiny of the operation of the policy process has also raised further concerns which are not unrelated to this last point. The fact that there may be democratic representation at the stage of formal decision making is seen to be inadequate where there are problems with both the earlier and later stages of the process – stages which are increasingly understood to be just as determinant of eventual outcomes. Thus, the predominance of experts and administrators – and more worryingly of an often very narrow range of represented interests – at the initial stages of the process where options are formulated can unduly restrict the choices to be considered at the decision making stage. Similarly, technocratic hegemony at the stages of the implementation and evaluation of policies can raise doubts about the extent to which decisions are responsively translated into action and to which their effects are measured in terms which are meaningful to interested actors.

It is evident, then, that however vital are the institutional reforms under consideration, they will not by themselves be sufficient to address this range of problems and concerns. Reforms which focus on the empowerment of the Parliament, for example, will not address problems of legitimacy and accountability which are now understood to permeate every stage of the policy process. Nor indeed will any reforms guarantee the effectiveness

of European action insofar as they fail to tackle the restricted views offered by technocratic understandings of the implementation and evaluation of policy.

The Workshop concluded, therefore, that Europe needs to address issues of legitimacy and effectiveness in a comprehensive manner and must be prepared to consider new methods of achieving them beyond those suggested by traditional majoritarian parliamentary models.

While these are problems that also confront national level public actors, the Workshop identified specific reasons why they particularly concern the European level - reasons associated essentially with the trajectory of the European project.

Generally speaking, *the European project has followed a trajectory from negative integration to positive integration*. In other words, at the outset, the project was concerned to remove barriers to the establishment of a common market (such as tariffs) and to guarantee the four freedoms. As time went on, however, it became progressively apparent that completion of a single market required active intervention in more and more policy areas which may not at first sight have been identified as possessing barriers to trade but which if left untouched could allow Member States to enjoy unfair competitive advantages.

This is a significant shift but it is a question whether the structure of the European policy process has adapted sufficiently to reflect it. At the outset, there were two complementary forces which encouraged an essentially *vertical structure*. On the one hand, Member States recognised the advantages in sharing sovereignty in areas where there were already significant interdependencies. On the other, and perhaps more importantly in the immediate aftermath of the war, there was a recognition among the political élite driving the project that it was important to achieve an institutional structure which provided *strong, centralised control* of these policy areas. The independence of the Commission, for example, was crucial in maintaining a long-term European vision. Similarly, the ECJ was active from the outset in establishing the pre-eminent position of European law vis-à-vis any contradictory national measure.

For as long as the Community was concerned with issues of negative integration, this vertical structure was not subject to serious sustained challenge. Over time, however – and especially with the passing of the Single European Act in 1986 and the subsequent drive towards the completion of the single market in 1992 – the Community's involvement with positive integration developed exponentially. This shift has raised problems which have strained the vertical structure of the European policy process and exposed weaknesses in arrangements which were crucial to the success of the early stages of the project.

The Workshop's conclusions with regard to the nature of the problems and challenges facing the European policy process can be considered under three main headings:

- a perceived lack of accountability and legitimacy ;
- conflicts of policies ;
- challenges to the centralised character of European public action ;

and are summarised in the following sections.

A PERCEIVED LACK OF ACCOUNTABILITY AND LEGITIMACY

The removal of tariffs and other readily identifiable barriers to trade did not have a significant immediate impact on the lives of the majority of people. More recently, however, as the move towards positive integration has gathered pace, the impact of decisions taken at a European level has become more tangible for many people. And yet those decisions emerge from obscure and opaque mechanisms such as the comitology process which, far from being open and transparent, tend to favour a limited group of powerful, professionally represented actors in any given policy area. The formal and institutionalised channels of representation are all too often overly rigid and lead to an incomplete view of problems and possible solutions. As a consequence, accountability and legitimacy increasingly become a matter of public relations to sell a fait accompli rather than the product of a political process.

In short, the very limited opportunities for accountability provided by the initial structure of the European institutions were not a serious problem while negative integration in rather well-defined areas was the prime objective. But in the context of positive integration across a growing range of policy areas the vertical structure with its top-down, centralist, command-and-control approach to policy formulation and implementation faces an accountability gap that can no longer be defended on the grounds of the overriding demands of the European project. The lack of means to enforce the transparency and procedural integrity of the policy process is more keenly felt when that process produces very tangible effects on the daily lives of the European public.

The other side of the coin, of course, is the fact that in areas where there is a public demand for European action – that is, where it is readily understood as necessary and thus legitimate – the EU is perceived to be weak. In such areas as common foreign and security policy co-ordinated action is seen to be a precondition for success and yet it is precisely here that the EU seems unable to deliver.

Reforms are required which do not aim to achieve legitimacy by focusing on the moment of decision making but rather which seek for opportunities to enhance participation at every stage of the policy process. Only in this way will European action respond to public expectations and the project as a whole become tangible and understandable to the citizens.

CONFLICTS OF POLICIES

Not only is the structure of the European policy process characterised by its vertical arrangement but also by its *functional segmentation*. Inheriting its structure from the model of administrative actors at the national level, the Commission in particular is divided into a range of Directorates-General, each responsible for clearly defined policy areas. The main aim of this arrangement is to *reduce complexity*. Instead of attempting the impossible task of regulating the entire policy environment from the vantage point of one government actor, that environment is divided up into more manageable pieces and allocated to specialised departments. These departments can then develop the expertise necessary to solve the problems associated with their particular area and the locus of responsibility for any given task is relatively easy to determine.

For the Commission, this structure has been flexible enough to allow newly-arising tasks associated with the shift from negative to positive integration to be allocated either to existing or to newly-formed DGs. The establishment of a largely functioning market and the progress made towards the single currency are testament to the success of this approach to the management of complexity.

Nevertheless, the concomitant increase in the number and range of responsibilities lying especially with the Commission has exposed the limitations of this vertical, segmented approach. In particular, while focusing on a given aspect of the policy environment serves from one perspective to reduce complexity and to render it more manageable, it can equally serve to *mask complexity by hiding the interdependence of one policy area with another*. Such interdependencies may take the form either of :

- *negative externalities* (which because of an overly restricted focus at the point of policy formulation may only become evident when they are irreversible or at least very expensive to resolve e.g. the BSE crisis); or of
- *synergistic opportunities* (which again may be missed at the outset because of an inability to appreciate a broader context and only recognised when the degree of policy implementation makes it impossible to take them up or to do so only with reduced effectiveness or efficiency).

The tendency to consult with only a limited set of powerful actors at the stage of policy formulation (mentioned under the previous heading) merely serves to exacerbate the problem of segmentation. And similar concerns arise at the other end of the policy process when evaluation is considered – in too many cases the fact that evaluation criteria are not framed by those with a direct interest in policies and that in any event evaluation results are often not fed-back into the process of revision only increases the likelihood that policy interdependencies will be missed.

A further complication at the European level should also be noted. Given the fact of subject-specific councils within the Council of Ministers, it is possible that, say, agriculture or transport ministers whose plans have been thwarted in the context of their multi-disciplinary national cabinets may use the European level as a means of forcing the issue. Again, the implications for policy coherence are clear and to this extent the national arrangements may give rise to fewer concerns.

As a growing range of issues have come to be dealt with at the European level and as this development looks set to continue, policy conflict is likely to pose an increasing problem for the institutional actors and especially for the Commission. *The reform process must take the form of a systematic appraisal of the current situation and look for ways to overcome the problems of functional segmentation across the board as opposed to the current reactive and ad hoc approach.*

CHALLENGES TO THE CENTRALISED CHARACTER OF EUROPEAN PUBLIC ACTION

For as long as the Community had responsibilities for the relatively limited objectives associated with the initial drive towards a common market, the centralised, top-down approach was entirely in order. In addition, the need to kick-start such a process in an area previously characterised by the negative effects of efforts to secure short-term

political advantage at the national level made a strong and independent central actor essential. But this position became less tenable as the responsibilities associated with positive integration increased demands on resources as well as the perceived impact on civil society. In these circumstances, the risk of a divorce between the policy process and the contexts it was supposed to affect became more and more clear.

As a consequence, decentralising pressures built up on the Community. This was already evident, for example, in the principle of subsidiarity in the Maastricht Treaty and reappears in the banner under which the Amsterdam Treaty was drafted of 'bringing Europe closer to the citizen'. And yet it seems clear that to date only limited progress has been made in achieving decentralisation to a degree and of a sort that meets either the expectations of civil society or the demands of complex problems.

Future reform will only be successful insofar as it responds to the expectations which civil society has with regard to the European policy process. The complexity of problems and the diversity of that society mean that it is no longer sufficient to look for inspiration to the model of representative democracy. The reform process needs to be open to more innovative options.

INTERIM CONCLUSION

The Workshop stressed that the current understanding of the European policy process, which focuses almost exclusively on the moment of decision-making, needs to be modified. The growing evidence of the pressures on the existing approach needs to be responded to in a proactive and systematic way rather than as at present on a reactive and ad hoc basis. *In other words, the entire policy process from the framing of problems, through the formulation of policy, its implementation, evaluation and revision needs to be opened up and liberated from the shadowy world it currently inhabits – civil society needs to be engaged in and by European action.*

As matters stand, European policy risks being developed on the basis of a partial (in the sense both of being incomplete and biased) picture of the issues and of the range of possible responses. There is a lack of public debate on the evolutions which actually shape the lives of Europeans and thus the European agenda does not accurately reflect the priorities of civil society. The functionally-segmented policy process only serves to reinforce this situation by effectively imposing pre-established understandings of the limits of problems and thus restricting openness to interdependencies and other stakeholders. Likewise, the vertical structure of the policy process reduces responsiveness to contextual differences and details which may have a profound impact on effectiveness as well as on perceived legitimacy.

There is an increased awareness that policy outcomes are as much determined by the early and largely unregulated steps in the process as they are by the moment of decision making. And yet these are the stages where functionally-segmented, centralised public actors shape policies often in consultation with only a narrow range of powerful interests. Accordingly, more than ever, the extent to which representatives are representative in any meaningful sense in a given context is called into question. Insofar as reform focuses on decision making and thus, for example, on enhancing the powers of the Parliament, it risks missing entirely these vital issues. No matter how thoroughgoing the improvements at this stage, therefore, there remains a heightened probability of problems arising in the

future due to unconsidered interdependencies as well as a serious risk of damage to the perceived legitimacy of European action. Such an approach denies the policy process the benefit of the full range of available expertise and knowledge as well as of a better informed and engaged civil society. *In short, failing to recognise that all stages of the policy process have a political dimension and that its present functionally-segmented and centralised structure impose undue restrictions on the range of possible action means that reform will not address the most pressing problems. It will remain the case that policy is seen to emerge as a compromise among the limited set of actors who dominate a particular field rather than on the basis of consensus or co-operation among all of those who are actually affected irrespective of whether they are traditionally recognised as having an interest in that field.*

The reform process, therefore, needs to focus on possible means to increase the opportunities for and improve the quality of public debate on European issues throughout the policy process – not least in ways which allow functional boundaries to be overcome and the predominantly vertical alignment to be moderated by complementary horizontal structures. Such a focus will have implications for the possibilities that may emerge for civil society and for the roles that may be envisaged for European public actors.

Romano Prodi has identified the next tasks for the Union as moving from a single market and single currency towards a single economy and a single politics. We can now characterise such a move as involving further progress along the trajectory of positive integration and, on the analysis presented here, as further increasing pressure on the Union and the Commission in terms of accountability and legitimacy, policy conflict and decentralisation. It would appear, then, that this move can only be achieved not by addressing the simple *distance* between Europe and the citizen but by *reappraising the relationship* between Europe and the citizen. *It can no longer be a paternalistic relationship but rather must be one of partnership.*

In the light of these findings, the Workshop proceeded to consider the following broad sets of questions:

- how to bridge the gap between the institutions, the contexts and civil society; how to enrich the channels of representation, enhance transparency and the means of associating socio-economic actors throughout the various phases of the policy process from the framing of problems through the taking and implementation of decisions to the evaluation and revision of solutions and how to extend accordingly the means of democratic control;
- how to organise decentralised governance and forms of co-operation among different levels of administration and different stakeholders so that flexibility and responsiveness can be achieved without harming the confidence of the various actors nor the integrity of the European socio-economic space;
- how to develop new capacities of strategic orientation and of policy integration, especially as regards the central institutions of the EU.

III. PROPOSALS

Having sought to examine the nature of the problems facing the Union and the Commission and having identified certain particular aspects, the Workshop moved on to make recommendations that could relieve those pressures. In each case, note was taken of evolutions already underway – especially within the Commission – that could be seen as a response to these issues.

To be clear, there was a consensus at the Workshop that questions of legitimacy, on the one hand, and of effectiveness, on the other, are intrinsically bound up together and should be understood accordingly. It is only for the sake of ease of presentation in what follows that these questions have been separated.

BRIDGING THE GAP BETWEEN THE INSTITUTIONS AND CIVIL SOCIETY

There is a need to open up the European policy process to engage civil society at all stages from the framing of problems right through to the evaluation and revision of policies. While traditional mechanisms for achieving legitimacy and accountability (such as territorial representation, periodic renewal of general mandates, consultation with professional and sectoral representatives, etc.) remain necessary, they are no longer sufficient in a situation where each stage of the policy process is understood as political. Rather legitimacy and accountability need to be won by adding mechanisms which allow participation in specific contexts and on an ongoing basis. This will require a commitment to thoroughgoing reform at all levels and at all stages of the policy process in order to increase opportunities for public debate; enhance the representative character of democratic structures; and increase the transparency and democratic control of the European policy process.

Improving the Opportunities for and Quality of Public Debate on European Issues

There is still a tendency to speak of a ‘democratic deficit’ and thus to consider reforms which draw inspiration from the model of representative democracy. The problem, however, runs much deeper than this phrase indicates and requires a similarly more profound response. Rather than a democratic deficit, it would be more accurate to speak of a more fundamental deficit of awareness and accordingly to consider reforms aimed at addressing this problem. There is a need, therefore, to improve the level of public awareness of the major themes of European policy and to provide opportunities for civil society to contribute to the development of those themes. Achieving these ends will require both procedural/organisational changes and structural reforms.

The Commission needs to address itself to the question of how European issues can be brought systematically into the public eye and their relevance made tangible to civil society. Among possible options, the Commission should consider how it might assist in the following initiatives.

- **Streamline the European agenda** and establish clear and explicit links with important forthcoming events especially on the international stage e.g. WTO, climate conferences, etc. This will allow the importance of the EU as a global player to be emphasised, again strengthening its position as against narrower interests. The next IGC could **consider innovative ways through which civil society could amend the European Agenda.**
- Establish more regular meetings on general policy issues such as **the Annual Conference proposed by the Parliament.** Such meetings should be characterised by openness and participation from the setting of the agenda through to the preparation and publication of conclusions. The forthcoming special summit in Porto – where the three processes initiated to address unemployment will be jointly examined and a Forum involving civil society will be organised in parallel – should be an opportunity to put these values into practice and the Commission in partnership with the Parliament and other actors should encourage the preparation for the summit to be conducted in this way.
- **Mutual awareness of national debates on issues of common concern,** making better use of opportunities presented, for example, by the media, information technology, etc. Such a move will limit opportunities for important issues to be reduced to short-term or national interests and allow their European significance to be emphasised.

Recognising the limits imposed on the policy process by functional segmentation, the dominance of powerful actors and the natural tendency towards short-term interests, the Commission should also consider reforms which can extend the range and quality of information available to all actors and hence improve the quality of debate and deliberation. Such reforms could primarily seek to encourage the development of means to improve:

- **Independent policy evaluation:** this would ensure that the criteria to be tested are meaningful to affected actors, that the process of evaluation is more transparent and that the results are fed back into the process to inform policy revision. The Parliament has made proposals for **an independent office to carry out this role.**
- **Pluralistic scientific expertise:** the traditional reliance on technical fixes and expert solutions which preclude democratic debate is increasingly called into question. A series of events (such as global warming, the difficulties associated with nuclear waste management and a succession of food safety scares) has revealed the limits of this approach and emphasised the extent to which these are related to vital political choices. Pluralistic scientific expertise will help to improve awareness of scientific uncertainties and assist in the deliberation of collective choices. At issue is the need to develop a culture of risk, to address unequal risk distribution and to ensure that risk-related activities and research are more driven by societal concerns and needs.
- **Prospective studies:** these allow long-term challenges and emerging issues to be brought on to the European agenda and provide a perspective for current choices, overcoming short-term conflicts and the possible dominance of short-term views linked to powerful or narrow interests.

There are already examples within the Commission of developments which seek to improve information provision and to achieve pluralist approaches to evaluation. In

addition, these practices have been progressively enhanced by new modalities such as Green Papers, new modes of involving socio-economic actors in the formulation of research objectives and so on. But these remain ad hoc and often one-off exercises entered into at the discretion of the Commission.

What is required is a more developed consideration of the ways in which Europe can be brought closer to civil society by providing opportunities for ongoing active and meaningful engagement throughout the policy process on a more systematic basis. Such an approach, implying a more deliberative organisation of the entire process, can allow legitimacy and accountability to be achieved on a continuing basis. At the very least, the systematic development of these tools would allow best practice to be diffused throughout the EU.

Recommendation 1

The European agenda must come to be understood as more relevant by civil society. Specifically acknowledging the proposals made by the Parliament and expressing a willingness to work collaboratively with it, the Commission should seek for ways to assist in widening and deepening public debate on European issues. It should take steps to improve the quality of information reaching the public and to make better use of information emerging from consultation. In taking such steps, it should consider how issues of common concern may be raised simultaneously across national borders and should seek to link the European agenda to developments at the global level. In particular, the Commission should make more judicious use of Green Papers, restricting them to a few issues of real concern to people, using clear language, disseminating them widely and facilitating responses. At the institutional level, as a key symbol of its commitment in this regard, it should support the Parliament's proposal for an independent office for the evaluation of European policies as well as actively encouraging the development of capacities for pluralistic scientific expertise and for prospective studies.

Enriching Channels of Representation

A key aspect of the first recommendation is the engagement of civil society whether at a general level on the major themes of European policy or at a more detailed level as regards the development, implementation, evaluation and revision of specific policies. At present, it is too often the case that representation is either too broadly or too narrowly based to provide an adequate picture of affected interests for the policy process. In many circumstances, territorial representation is too broad to accommodate diverse populations. In others, consultation mechanisms allow only a very narrow representation of, for example, sectoral or professional interests. In both cases, the formal and rigid structure of representation channels is in any event ill-adapted to cope with emergent, interdependent and dynamic problems which call for more flexible and responsive mechanisms. Progress in this direction can be achieved by building upon the emerging trend at national, European and international levels to make use of more innovative means and channels of representation. Among the options to be considered are the following:

- Promoting the **use of ad hoc representative or consultative mechanisms** on specific issues of concern such as citizens' conferences, deliberative opinion polls, citizen's juries, public hearings, focus groups and forums. Recent crises have revealed the

extent of dissatisfaction with the degree of secrecy surrounding the response by authorities and the delays in informing the public or listening to their concerns.

- Offering the opportunity and **resources for independent initiatives to emerge**. This more proactive role could be developed by the Commission especially within the framework of the 'European initiatives' programmes supported by the structural funds.
- Encouraging the **development of capacities in the European institutions to initiate, animate and regulate such mechanisms** and especially to address the issue of the inequality of resources among different actors. The fact that narrow sectoral interests, for example, have close links to governments or the means to obtain access or influence means that civil society requires active assistance if it is not to be disadvantaged in the policy process.
- Improving the **local presence of the Commission** and being willing to adopt an ad hoc animating or co-ordinating role. Recent food safety scares are prime examples of the extent to which Member States continue to operate against the interests of European civil society in order to protect narrow national concerns. There is a need and an opportunity for the Commission to respond to such public concern.

Once again, there are examples of developments within the Commission which indicate a desire to enrich channels of representation by providing opportunities to deliberate collective choices and allowing better access for social actors to the institutional structure of the EU. Examples include forums open to NGOs, hearings, administrative codes of conduct and so on. But again, such developments need to become institutionalised rather than discretionary.

Recommendation 2

The Commission should announce its intention to move towards the systematic development of a policy process characterised by open communication at all stages where the views of affected actors are actively sought and valued. The Commission should initiate an evaluation of emerging innovative mechanisms for representation, participation and consultation in order that current best practice can be built upon. It should then prepare a Green Paper on new forms of representation, participation and consultation with regard to European issues.

Improving the Transparency and Openness of European Policy making

The diagnosis highlighted the difficulties associated with focusing on the moment of decision making when considering reform. The role played by, for example, the earlier (often opaque and unregulated) stages in shaping eventual outcomes means that emphasis needs to be placed on addressing transparency and openness throughout the policy process. For as long as these issues remain untouched, civil society will continue to feel disengaged – indeed disenfranchised – from European action. The Commission should, therefore, in the short-term:

- Announce a **general policy of transparency**, with more systematic use of a range of media, especially information technology, to ensure that precise and straightforward details about the European policy process are easily available to civil society.

- Solemnly declare its intention to **involve systematically representatives of all affected interests** at all stages of the policy process from the framing of problems to the evaluation and revision of policies.

Strong support should also be announced for a range of deeper reforms that could be usefully informed by administrative experience in the US. These may require more extensive consideration – and ultimately Treaty amendment – and include:

- The **formalisation of basic rights** which would underpin the developments in the policy process discussed in this paper (such as rights of information, consultation, expression, etc.) as well as the formalisation of the corresponding obligations (for example, to give reasons for decisions, explaining the grounds on which they have been reached, explaining why any representations have been disregarded, etc.) on the part of public actors. While these rights already exist to a greater or lesser extent at the national and indeed the European level, the impact of their solemn formalisation in a new **European Charter of Political Rights** should not be underestimated.
- The passing of a **Framework Act codifying common principles for regulatory authorities** at European and national levels that would constitute the concrete implementation of these rights and obligations as regards public actors. The uniformity offered by this approach would assist transparency insofar as it provides fixed reference points for the public to assess the decisions of authorities responsible for formulating and implementing European policy.

New mechanisms would probably be required to implement these reforms and there would be implications for the role and function of the European institutions. The Economic and Social Committee and the Committee of the Regions, for example, could be given a role of regulating consultation processes, channelling information in both directions – up from civil society to the institutions and vice versa. A role as procedural regulator could be envisaged for the Committees of the European Parliament, while the ECJ and the national administrative courts could be given the task of enforcing procedural rights and obligations.

The bodies that would be subject to this oversight would include: the Commission in the exercise of its task of making proposals; the groups that advise or control the Commission in its executive capacities, the working groups of the Council (where more than 90% of European decisions are shaped and taken almost behind closed doors and of which the composition, functioning and relations with other institutions and actors – insofar as they exist – are almost self-regulated); the European Agencies; and finally the national administrations and regulatory authorities who transpose and implement common decisions.

These reforms would also facilitate the delegation of a greater degree of discretionary powers to decentralised bodies - a move that is required if a more contextualised approach to European policy is to be achieved.

Many of these proposals should form the subject of a future IGC and the preparatory work towards such a conference should take the lead in demonstrating commitment to a Europe closer to the citizen by using more open and extensive consultation processes.

Recommendation 3

Recognising that the value of the reforms contemplated in the foregoing recommendations will be reduced in the absence of enforceable rights and obligations, the Commission should initiate debate on a European Charter of Political Rights, a Framework Act codifying common principles for regulatory authorities and on the mechanisms required to implement them, with a view to progress on these issues at the next IGC. As a sign of its own commitment in these respects, the Commission should nominate a Commissioner with responsibility for a Citizens' Europe to encourage wider participation and to oversee the reforms highlighted in the foregoing recommendations.

IMPROVING THE EFFECTIVENESS OF EUROPEAN POLICY

Towards Flexible Decentralised Implementation

Confronted with complex problems and an ever more diverse Union, the difficulties encountered by a strongly centralised and hierarchical policy process are only likely to increase. The Commission in particular cannot continue to be involved in detailed matters of technical implementation and micro-management given the range of policy issues it now has responsibility for. The EU, therefore, needs to give renewed effect to the motivation that lay behind subsidiarity and the slogan 'bringing Europe closer to the citizen' but this time in ways which both make a tangible difference to civil society and free the Commission to concentrate on policy issues. The vertical orientation of the policy process needs to be progressively complemented by horizontal structures which engage other actors as partners at all stages. There should, in other words, be a move away from the situation where consistency and confidence are sought to be achieved through hierarchical control to one where they emerge through inter-linked processes of transparency and of mutual control and accountability. This will entail the development of capacities to encourage and animate networks of both institutional and non-institutional actors. This in turn could contribute to the further development of the emerging trend of delegation to national independent authorities in a more consistent and organised way throughout Europe. First steps down this important path could include:

- **An evaluation of existing delegation practices**, especially the development of European agencies in such fields as medicines, the environment and occupational health and safety. How have they used and developed the powers delegated to them? What lessons, both positive and negative, can be drawn from their experience of developing networks of national agencies? Do they assist in developing better informed understandings of problems? Do they encourage an overly-narrow and technocratic view? etc. Such an evaluation could prepare the way for the following two possible steps.
- **A White Paper on decentralisation** to feed debate on options for a better organised decentralisation allowing a clearer distinction between policy and implementation. Recent crises have highlighted the need for more active and organised networking between the various regulatory authorities and organisations involved in given policy areas.

- **A White Paper on the management of the European programmes.** It is perhaps through running numerous such programmes of decentralised co-operation in a whole range of fields that the EU and more particularly the Commission has developed the strongest and most direct links with civil society. Programmes are a unique opportunity for the Commission to be a manifestation of ‘Europe closer to the citizen’ and for the European project as a whole to be understood more widely as a tangible and unequivocal force for progress. They have also proven to be the best instruments for the creation of ‘a Europe of the citizens’, helping them to establish links across frontiers and assisting them in their initiatives. Yet, probably because of the lack of appropriate capacities (both in terms of means and of knowledge), the Commission has largely failed to build and retain an organisational memory to maintain and benefit from these networks over the longer term. Instead, it has tended to focus more on formal requirements, disregarding the essence of the projects it was supporting and thus now runs the risk through externalisation of losing these opportunities completely. The objective of a better organised and decentralised architecture for the implementation of European programmes should be to enhance the opportunities to realise their primary objectives and not only to ensure their sound financial management by multiplying formal criteria. The creation of **European Decentralised Public Offices** is one option to be investigated in this regard.
- An **ad-hoc deconcentration of the Commission** according to specific needs. The Commission in particular should take a lead by not hesitating to deconcentrate functions when it recognises that this is appropriate in any given set of circumstances. Apart from organisational benefits, such a readiness will also be a tangible sign of the Commission’s commitment to bringing Europe closer to the citizen and will allow contacts between civil society and institution to increase over time, progressively reducing the extent to which Europe seems a remote and sometimes irrelevant entity

Recommendation 4

Recognising the pressures on the centralised vertical structure of European policy making, the Commission should evaluate experience with existing developments towards decentralisation and delegation – notably the emergence of European agencies. It should prepare a White Paper to launch debate on decentralisation and to examine options - especially those which assist in the separation of policy from technical functions and those which improve communication among all interested actors by means, for example, of networks. It should also prepare a White Paper on the decentralisation of the management of the European programmes in order that the focus may be on the realisation of their primary objectives rather than predominantly on narrow and formal financial criteria – European Decentralised Public Offices could be a key option for consideration in this regard. The Commission should also take a lead in decentralisation by being prepared to deconcentrate on an ad hoc basis in response to specific needs.

Improving the Coherence and Integration of Policies

The segmented structure of EU policy making structures contributes significantly to a situation where policy coherence is more difficult to achieve and where the probability of policy conflict is increased. Synergistic opportunities can go unnoticed until it is no longer efficient to take them up, while negative externalities can remain undetected until their effects are irreversible or extremely expensive to correct. In short, the potential

effectiveness of European action can be seriously compromised. The Council has already initiated a review with the aim of overcoming its own segmented organisational structure. Given the understanding developed in the diagnosis of how policy coherence is achieved (as a matter of concern at all stages of the policy process from the formulation of choices through to the stages of evaluation and revision) and given its particular role in this process, the need for such a review is even more important for the Commission. The proposals for the regrouping of responsibilities made by Mr. Prodi indicate a recognition of this problem but it is a question whether these will allow sufficient flexibility to deal with opportunities and problems that emerge unexpectedly as between regrouped broader policy areas. Addressing this issue will therefore involve a consideration of further alternatives.

- The **systematic use of the cross evaluation approach** where one policy is evaluated from the point of view of another. This entails the development of programmes, objectives and indicators in each policy area which demonstrate how other policy objectives are taken into account, synergistic opportunities are sought and acted upon, and early warning of negative externalities is ensured. In this regard, the developments regarding environmental policy (including the requirement in the Maastricht Treaty that other sectors give an account of their environmental orientation and specify which instruments and indicators they have developed to achieve it) should be closely examined with a view to applying this approach in a more systematic manner. The fact that the Cardiff summit took steps to encourage these developments and that similar requirements now also apply to consumer protection and employment provide a clear indication of the importance of this type of reform.
- A **greater readiness to use Task Forces** to deal with horizontal problems as soon as they emerge. BSE and a succession of other food safety scares provide a clear lesson that swift and decisive action is required when conflicts emerge between policy areas. The Human Resources Policy Unit (see below) should be actively involved in the staffing of such Task Forces and act to ensure that problems caused by loyalty to DGs of origin can be overcome.

More fundamentally, the Commission should consider the basic internal structural reforms that are needed to address the issue of policy coherence.

- The Commission should initiate a **systematic appraisal of its present structure in terms of its ability to ensure policy coherence**. In this context, the objective of the regrouping announced by Mr. Prodi should be explicitly to ensure that the new structure compels the Commission's services to take fuller account in their policies and activities of: the global priorities or concerns, such as sustainable development, social cohesion, competitiveness, etc.; the interfaces with external dimensions/relations; and the need to foster horizontal procedural activities, such as evaluation, development of animating and networking capacities, etc.
- Without pre-empting such an appraisal, it should consider in particular the **creation of inter-sectoral poles**: each DG or regrouped set of DGs could have **specific Units responsible for efforts to integrate global objectives and enabling Units to promote evaluation and networking**. Examples of the issues they would focus on might include: sustainable development; competitiveness; social cohesion; food safety; external stability/relations, etc. These Units would be correspondents within each DG for other policy areas and would form a network with the Central Units described below.

Recommendation 5

In order to contribute towards policy coherence and implementation, the Commission should initiate a systematic appraisal of its present structure in this regard. It should consider adopting cross-evaluation among policy areas on a systematic rather than an ad hoc basis – preferably in tandem with the creation of inter-sectoral poles – and display a greater readiness to deploy Task Forces to deal with horizontal problems.

Within the Commission, in addition to the immediately preceding considerations, the achievement of coherent and integrated policies will require certain oversight functions that might best be carried out by a series of Units reporting directly to the President. These would have a horizontal animation/regulation role, assisting and facilitating initiatives within the various Services. The four Units that could be envisaged are as follows.

- A **Central Regulatory Unit** responsible for the evaluation of sectoral initiatives and policies. Such a Unit, under the responsibility of the President or of a Vice-President, could be assigned the task of verifying that sectoral initiatives have properly taken into account and assessed their impact upon global priorities and concerns. A power of veto could be exercised where the finding is not satisfactory and the initiative would be sent back for further consideration. Thus, the Unit would not arbitrate directly on substance but would ensure that the decision makers are more systematically conscious of the global impacts of their decision.
- A **Budget Evaluation Unit**: without replacing the function currently carried out by DG XIX and DG II, such a Unit would evaluate proposals on the basis of their economic implications and ensure the ongoing monitoring of the overall economic impact of European policies. In conjunction with the Risk Evaluation Unit (see below), this Unit would also ensure that the deployment of resources to address particular problems was in proportion to the benefits that could be anticipated.
- A **Risk Evaluation Unit** : while the Commission’s responsibilities with regard to the assessment and management of risks have increased in recent years, there is as yet no mechanism in place to ensure that this is done in a coherent and consistent manner across sectoral areas. Risks associated with one policy may not be restricted to that particular domain and equally risks may only become apparent when aspects of more than one policy are considered together. A Risk Evaluation Unit would, therefore, carry out this role of ensuring coherence and consistency, diffusing best practice, auditing the risk assessment and management approach of Commission services and facilitating these processes at an inter-service level in conjunction with other Units responsible for policy coherence.
- A **Human Resources Policy Unit** (see below).

Recommendation 6

The Commission should establish a Central Regulatory Unit, a Budget Evaluation Unit and a Risk Evaluation Unit. These (together with a Human Resources Policy Unit (see below)) would report directly to the President and operate specifically so as to achieve the coherence and integration of policies. They would ensure that policy proposals had addressed their impact on global priorities and concerns and on other policy areas. They would equally ensure that economic and risk issues had been properly addressed.

HUMAN RESOURCE IMPLICATIONS

Although it is clear from the above discussion that the Commission is already involved in developments which respond to the difficulties identified under the general headings of accountability, coherence and decentralisation, it is equally clear that these developments more often occur in an ad hoc manner or relate only to specific policy areas. As a consequence, the foregoing recommendations stress the need for the thoroughgoing and systematic review and reform of structure and procedures. A vital element in implementing necessary change (and in ensuring a long-term commitment to maintaining the proactive and responsive stance implied by that change) will be the Commission's most important asset – its human resources. The Commission's policy in this regard will have to address the diversity of tasks to be undertaken as well as the increasing diversity of cultural and administrative backgrounds from which its personnel will be drawn. Its human resources policy, therefore, will have to aim at *the establishment of a distinct administrative culture which emphasises the core values of good governance* as developed in the foregoing diagnosis and recommendations. A first step along this key path could be the establishment of a Human Resources Policy Unit reporting directly to the President with responsibility for:

- The **development of Human Resources Policy** with rules and principles reflecting the Commission's role in a situation where the policy process is organised so as to increase the opportunities for engagement of other stakeholders at all stages. In other words, the development of a human resources policy which places the emphasis on the ability of personnel to act so as to maximise opportunities for co-operation, policy coherence and mutual learning rather than on their expertise in very narrowly defined technical domains.
- The **evaluation and nomination of senior staff** according to the values of this new policy – that is, the development of an active career policy and indeed of an actively regulated internal labour market – on the basis of ability to operate effectively within the participative policy process.
- The **definition of posts** according to criteria which incorporate the new governance values and the selection of senior officials on the basis of an evaluation of their performance according to these enhanced criteria.
- The promotion of **an active training and mobility policy** (internal & external) - for example, there could be a rule forbidding promotion after four years in the same job (except in the case of specialist technical posts); previous experience in other DGs could become a formal criterion for nomination to a post of Head of Unit; and the Unit could organise secondments, especially to countries other than an official's country of origin. These are very precise proposals, but after many years during which mobility has been identified as important but where little or no progress has been made, it may be that such simple concrete steps must now be seriously considered.
- As a related function, the **transfer of best practice** in relation to methods, working practices, etc. among DGs. The Commission represents a rich variety pool in this regard and such a Unit could operate as an enabling actor, facilitating the sharing of experience and exchange of information in order that all personnel may benefit from the collective memory of the institution.

Recommendation 7

Recognising the vital role to be played by its personnel in the achievement of necessary reform, the Commission should establish a new Unit under the authority of the President (i) to oversee the development of human resources policy for the new challenges it will face in terms of, for example, greater openness and responsiveness and of better communication and ability to co-operate; (ii) to evaluate the performance of key personnel on the basis of these new criteria so that the new skills and attributes required are developed and rewarded; and (iii) to facilitate the transfer of best practice among DGs. The basic task of this Unit, therefore, will be the establishment of the new administrative culture implied by the reforms contemplated in this paper.

DISCUSSION PAPER

IMPROVING EFFECTIVENESS AND LEGITIMACY : THE KEY ISSUES

Notis LEBESSIS & John PATERSON

The Reform Agenda

The question of institutional reform within the EU is very much on the political agenda. The German Presidency, for example, has indicated that the Cologne summit will be an occasion for the process to be reopened and the Parliament has within the past few weeks passed a resolution on the method and timetable that could be envisaged. The key driver for these initiatives is, of course, the prospect of enlargement in the early years of the next century - a development that has been given added urgency by the ongoing events in the Balkans. It is also widely recognised that the investiture of the new Commission in September under the presidency of Romano Prodi after the upheavals of the past few months represents a unique moment of opportunity for decisive steps to be taken along the road to reform.

Over the past few months, therefore, **the debate has reopened on what should best be done by way of reform**. Prominent in the list of possibilities under discussion is of course the so-called 'Amsterdam triangle'.

- The extension of **qualified majority voting**: in the context of enlargement, and especially of an enlargement that will greatly increase the heterogeneity of the EU, it is likely to become ever more difficult to achieve unanimity.
- Revisions to the **composition of the Commission** - again in the context of enlargement, the question of whether there can still be a permanent place for Commissioners from each MS is on the agenda.
- The question of the **allocation of votes** among MS in the Council - should the less populous countries continue to enjoy disproportionate influence?

In addition to these issues, however, there are other frequently mentioned areas for possible reform including:

- the composition and competence of the ECJ;
- extension of the codecision procedure;
- the working methods of the Council;
- the question of the accountability of the Commission;
- extension of the role and powers of the Parliament.

All of these issues are certainly important. **The upheavals of the past few months have demonstrated the extent to which some aspects of the operations of the institutions are in need of urgent attention.** Apart from anything else, these are often the issues upon which the media focuses its attention - and consequently the attention of European citizens. **It is a regrettable fact that the institutions of the EU are more often brought to the notice of ordinary people when there has been some failure of internal organisation than when they are involved in the work for which they primarily exist.** Over the past few months, for example, the Parliament came to public attention as it faced down the Commission over alleged corruption. That scandal out of the way, it then disappeared from the headlines until MEPs were seen to have failed once again to sort out their allegedly excessive expenses – a fact which the media jumped upon as indicating a rather hypocritical stance. In short, however important the other work of the Parliament or the Commission, the media – and thus the public – seem not to be interested.

At a more substantial level, these areas of reform are important insofar as they relate to the ability of the EU to function efficiently and to avoid being held up by one or two recalcitrant Member States - a matter which, as has been said, takes on renewed importance as we confront the possibility of a Union composed of twenty or even thirty MS. **And they are clearly important to the extent that they are designed to address the famous *democratic deficit*,** attempting to build bridges between the citizens of Europe and those entrusted to exercise power on their behalf.

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It is certainly the case, then, that the institutions need to get their houses in order from the point of view of the internal arrangements that exercise the media and the public and it is even more important that reforms are considered that will ensure that the EU can function in future in an efficient manner and with enhanced legitimacy. And if that is all that should concern us as regards institutional reform then we probably should not worry too much. However long and tortuous the negotiations, however many fights and reverses there are along the way, we could probably imagine that in a few years time many of these reforms will have been implemented to some extent.

The need for a new perspective

This, however, would be a dangerously complacent stance. **We need instead to stop and ask whether the reforms under consideration will in themselves be sufficient to meet the problems and challenges that now confront the EU.** This in turn implies refocusing our attention in the first instance on the nature of those problems and challenges rather than effectively assuming what they are by working with a list of solutions. It has been the observation of the Governance project of the Forward Studies Unit, however, that **the whole question of reform has not necessarily been approached from the appropriate direction.** In particular, we would suggest that **the reform agenda has to a great extent been considered at a relatively technical level** – for example, attempting to ensure a sufficient representation of the different MS in the Commission or the Council or to achieve efficient decision-making mechanisms in a body which at each enlargement becomes more diverse and potentially more unwieldy. **These are important matters, but focusing on them assumes that more fundamental issues do not pose any problems.**

One reason for this focus on rather technical fixes is that the institutions – for all that they clearly exist within a quite unique economic, social and political organisation, and without getting into the whole intergovernmental/supranational debate – **are nevertheless modelled upon a format that was developed largely in the last century for the government of the nation state.** Now it is certainly the case that the different institutions do not function in precisely the way envisaged by the nation state model – there is not, for example, such a clear

separation of power and of function nor does the Parliament play the role it would at the national level – but **proposed reforms do not in the main go back to first principles and address the question of whether the institutions and methods that were appropriate to government a hundred years ago are still the best way of meeting the challenges and problems confronting the EU at the turn of the millennium.**

More specifically, it is a question whether *the compartmentalised Commission and Council* are able to cope effectively with, for example, social and technological problems which are increasingly revealed to cross the neatly drawn boundaries of administrative divisions. Similarly, it is a question whether reforms aimed at increasing the power of the Parliament will be sufficient to meet concerns about *accountability and legitimacy* in an increasingly diverse and pluralised Union. That these are appropriate and indeed urgent questions is attested by the fact that their counterparts are also being raised at the national level. If such problems exist there, then *a fortiori* they confront the EU.

It is for such reasons that the Governance project has turned its attention in the first instance to a closer re-examination of the problems we are trying to solve when we talk about institutional reform. This has involved asking ourselves about the fundamental nature of these problems and trying not to be preoccupied with superficial symptoms – however serious they may appear to be. **The risk we perceive if such an approach is not taken is, to put it rather bluntly, that the focus will be on the efficiency and ‘high-level’ fairness of the EU’s decision-making processes with insufficient attention being paid to the actual effectiveness of the decisions taken and their genuine acceptability at a grass-roots level – two factors which are not unrelated.** In other words, attempting to deal with the democratic and regulatory deficits in the European Union without fully understanding what causes these problems is likely to lead to more difficulties in the medium- to long-term even if some short-term relief is achieved.

Towards a new model of democratic governance

The nature of the problems

The Governance project brought together a number of experts from different backgrounds and different jurisdictions to discuss a range of issues within the field of governance. Despite this diversity, it was possible to discern some general themes running through their interventions. In particular, there was a **consensus on the context of complexity, diversity, interdependence and uncertainty within which government action must now operate.** All pointed to a situation of increasing complexity in which **the most pressing problems of society appear beyond the reach of the political programmes and the bureaucratic administrative bodies which have traditionally been deployed to resolve them.** All pointed similarly to **an increasing awareness of the interdependency and multiple connectivity of such problems which leads to new difficulties of co-ordination for public actors.** The BSE case is, of course, the classic example in this regard because of the crystallisation of latent risks, but others are not hard to find. Problems of transport, for example, must now be seen also in terms of problems of environmental protection, public health and regional development to name only a few. **Such problems are marked by a complex mix of dimensions which is by no means easy to define in advance, is dynamically evolving and represents a considerable challenge to the control assumptions of traditional government actors.** Apart from anything else, the sheer weight of issues confronting public actors is such that **it is becoming increasingly difficult for them to set long-term objectives, prioritise among them and respond flexibly and efficiently to new circumstances.**

Beyond these factors, the various external participants in the project also emphasised a **growing awareness of the different perspectives and values that can be brought to bear on the problems facing government actors.** At the political level, this pluralisation of values threatens to render the notion of the general will which underpins the traditional models of

democratically representative government redundant. At the level of government action, such a diversification of perspectives or of systems of knowledge similarly threatens the unilinear expert models upon which regulatory programmes have traditionally been based. At the extreme, such a situation leads to problems of radical uncertainty, already evident, for example, in certain aspects of environmental policy, the BSE case and, of more immediate concern, the question of genetically-modified foods and the dispute with the US over hormones in beef.

The net result of this situation is, as was already suggested above, that **the model of representative democracy and the bureaucratic state upon which government action has traditionally been founded is increasingly inadequate to cope with the scale of the problems confronting it.**

Evidence from emerging responses

But the Governance project was not only concerned to look negatively at the inability of public actors to cope with contemporary problems. It was equally concerned positively to examine such responses as had been made in attempts to cope with complexity, interdependency, pluralisation and uncertainty, that is, to study **the emergence of new governance arrangements**. For as pre-existing modes have shown signs of strain, new arrangements have been introduced, either as part of a government response or more spontaneously, which seek to associate affected actors (or stakeholders) on a more context-specific basis. **These arrangements often do not conform to standard assumptions about accountability or about how effectiveness is to be achieved.** Thus, they may often seek, for example, to engage context-specific expertise or values in the development of policies and in the production and application of rules rather than developing them at a high level and imposing them from above on the basis of expert models prevailing in the bureaucracy.

The significance of these new arrangements is, however, frequently missed. Because of the persistence of the dominant models underlying government action - namely the market model of the liberal state and the interventionist model of the welfare state - **emergent modes of governance are often characterised inappropriately both by their supporters and their detractors as examples either of 'deregulation' or 'reregulation' respectively.** That there is a clear desire to break out of the constraints imposed by the binary pair of the liberal state/welfare state, is attested by the discussion in the past year of a Third Way in politics by Western leaders such as Blair, Clinton and Schroeder. That there has, nevertheless, been little progress towards the Third Way is clear from the relative lack of substance that any of these leaders or their academic mentors has so far been able to provide.

That said, a more open appraisal of the new modes of governance emerging could offer some assistance in putting flesh on the rather bare bones of the Third Way. For **developments such as these mark a break with the position where representatives are democratically elected, formulate broad policies in legislative chambers and oversee their detailed implementation by administrative departments or the smooth running of the free market. Instead, the process of policy formulation and implementation is increasingly understood as a more collective effort with public actors playing a more enabling role - neither imposing a particular understanding of the problems to be tackled nor of the means by which they might be resolved.**

And yet, **despite this undoubted shift, it could be suggested that EU institutions are often criticised on the basis of their failure to conform to the nation state model of representative democracy and that, to a greater or lesser extent, proposed reforms flow from an adherence to the same model.** Thus the Commission, for example, as a promoter of European policy and as the partner of national administrations in its implementation, is frequently portrayed as lacking legitimacy in terms of the model of representative democracy. The current

context within which government action must operate indicates, however, that the Commission's position should not solely or necessarily depend upon an assessment in terms of such forms and concepts as periodic election or of the centralised implementation of standardised solutions. Rather, in this context, the Commission, in common with other public actors, both at the European and national levels, must be considered in terms of its ability to adapt its role and its methods to the nature of the situation it confronts.

The challenge and opportunity of institutional reform

It is therefore apparent that the contemporary context presents both a challenge and an opportunity to the institutions of the EU. The **challenge** consists in overcoming objections to their actions based on a model of legitimacy that is increasingly at odds with the reality of governance at all levels and in continuing to adapt their role and the methods they deploy to the context of complex, interdependent problems, diverse perspectives and uncertainty. The **opportunity** consists in harnessing and further encouraging the emergent reality of new modes of governance at all levels in order that these can be integrated into the process of the formulation and implementation of European policy. The **prize** is greater technical effectiveness, new opportunities for accountability and thus the improved legitimacy of European action. If attained, this outcome has the significant advantage that it offers genuine accountability rather than the increasingly symbolic form available under the model of representative democracy.

New Modes of Governance

Examples

In order to be as clear as possible about how modes of governance that have emerged in response to complex problems differ from classical approaches we need to look a little more closely at the examples that were produced by participants to the project.

Practical developments in a number of European jurisdictions (notably France, Germany and the United Kingdom) were examined and in each case, evidence was presented of an emerging situation in which the standard model of the state and its actors is being modified. The examples were drawn from a variety of fields including environmental policy and health and safety, and from the entire policy process from the definition of problems through the production and application of norms of action to the evaluation and reformulation of policies and rules.

In place of the notion of administrative authorities formulating and implementing rules on the basis of politically-defined programmes, **the new arrangements indicate a transformed role for public actors and see them deploying methods other than those which have traditionally been found in the administrative toolbox**, such as centrally defined and generalisable detailed prescriptive rules founded on stable expert models.

Content of new modes of governance

Examples of new regulatory forms were presented which manifest a shift in responsibility away from the administrators who previously took policy and detailed decisions. These examples often arise in cases where the previous prescriptive approach has been shown to be inadequate by the occurrence of unforeseen events. Such events call into question both the expert models which underlie regulatory regimes and the ability of administrative departments to prescribe rules in sufficient detail for situations where a fuller understanding of the degree of uncertainty involved renders the linear causal model of regulation helpless. In such situations, associated for example

with the control of technology and environmental protection, **public authorities begin to adopt a role of encouraging and supporting procedures in specific contexts which associate the different stakeholders.** These procedures aim at one level to harness the variety of expertise which is available in each situation - expertise which under traditional regulatory forms is often unrecognised. Similarly, **they aim by their inclusive and transparent nature to ensure a legitimate production of rules** - the fact that all stakeholders are involved means that there is a greater chance of different perspectives being considered, of collective learning and of assurance that relevant concerns have been addressed. Lastly, **by encouraging a context-specific application of such rules which equally seeks to engage the different stakeholders, these procedures aim to improve both immediate effectiveness and ongoing openness to new information and emerging problems.** This in turn leads to improved flexibility and the ability to integrate the demands of other policies. The public authorities in such circumstances, in addition to their role of encouraging and supporting these procedures, frequently take on **an auditing or oversight role** which seeks to ensure the continued adequacy of the procedures and the attainment of collective objectives by the means agreed. **In sum, public actors take on a role of developing and encouraging 'constitutive' policies.**

Implications of new modes

It is therefore apparent that these new modes of governance have **implications for all stages of the regulatory chain.** Where there was previously only prior consultation with a limited set of actors in the context of unilinear regulatory schemes, **there is now frequently ongoing consultation with a wider and indeed unrestricted set of actors** in the context of a regulatory approach which is inherently more flexible and responsive. Consultation is accordingly no longer a means of informing the preordained stable expert models upon which public policy has traditionally been built, but rather becomes **a means of continuously testing the appropriateness of those models and of modifying or even of replacing them if necessary.**

A consequence of this appreciation of the inherent instability of expert models has been a **modification of the approach to the evaluation of public action.** Where previously evaluation took the form of the application of expert methods to test the attainment of centrally defined objectives, there is increasingly **a participative or inclusive approach to the entire process.** **Thus, not only are the objectives of evaluation agreed in a collective process involving relevant stakeholders, but even the methodologies to be employed are open to collective decision.** The result of such an inclusive approach to all stages of the process of regulation is frequently improved effectiveness associated with an **enhanced understanding of the nature of problems, a consequently more realistic setting of objectives and the harnessing of social systems of knowledge and values which make up the regulated area in both the production and the application of rules.** The legitimacy of the rules produced in such a manner is also enhanced as there is better understanding of and **improved confidence** in the process of rule-production.

One consequence of these transformations in modes of governance is that instead of a regulatory chain implying a unilinear sequence of events, **it is more appropriate to speak of a regulatory process.** **Such a process inherently involves a feedback loop which reintegrates new information about the regulatory context into the process of formulating and applying rules.** Procedural modes of governance understood as such processes appear to offer improved flexibility and adaptability over traditional regulatory forms.

The apparent decentralisation implied by **these modes of governance does not imply, however, that the location of ultimate responsibility for decision making is changed or made less certain.** Rather the process by which stakeholders are involved in collective learning means that the substance upon which decisions are based is enhanced in terms of democratic accountability

and the likelihood of acceptance and effectiveness is accordingly increased. Nor is the responsibility of public actors diminished by procedural modes of governance. It is indeed increased as they must now ensure the openness and adequacy of the procedures aimed at collective learning and co-ordinated action.

New roles for public actors

In such a context, therefore, where the nature of problems is understood in a more adequately complex way and where new modes of governance are developed accordingly, the role of public actors is being transformed. We can begin to see the ways in which their roles and functions are evolving. From a situation in which the ability to determine policy and to control outcomes centrally is assumed, **the role becomes one of controlling the contextualisation of the production and application of rules - that is, a 'constitutive' role.** Thus, greater emphasis comes to be placed on:

- clarifying the issues and enabling the participation of stakeholders;
- maintaining a long-term strategic vision and on integrating policies while encouraging the collective development of objectives;
- seeking to engage broader contextual expertise rather than assuming a monopoly of expertise;
- developing mechanisms for achieving the necessary participation; and
- developing those mechanisms in such a way that ongoing evaluation and revision is encouraged in the light of new information or emergent difficulties.

Key Features of New Modes of Governance

In approaching the question of institutional reform, therefore, it is not simply a question of working from a pre-determined list of alternatives or of arguing about which institutional arrangement is better *per se*. Rather **it is a question of how well any institutional arrangement is able to deal with the nature of contemporary problems.** If these problems are understood as complex and interdependent as opposed to being susceptible to the tools provided by one expert discipline; as possessing the potential to reveal further aspects of uncertainty in the future as opposed to being clearly definable once and for all in advance; as being open to differing definitions according to different perspectives, then any institutional arrangement needs to address **a number of key issues.**

- (a) Faced with contemporary problems, public authorities and experts appear more and more clearly not to have a monopoly on the means necessary to define adequately and deal effectively with them. The content of public action aimed at the attainment of collective objectives cannot, therefore, be pre-established outwith the context of application and other than with the collective involvement of stakeholders. **New modes of governance rest accordingly on guaranteeing the participation of stakeholders. The effectiveness and accountability (and thus the ultimate legitimacy) of government action must now be understood as depending increasingly upon the constructive inclusion of the plurality of points of view, of perceptions, of interests and of values.** And the nature of this participation must be properly appreciated. It is not simply an opportunity for experts or those holding political or administrative or economic power to 'educate' or 'persuade' other stakeholders. There must certainly be the possibility for other stakeholders to understand what those in power are proposing but there must equally be the possibility for those other stakeholders to present their own case and have that actively considered.

- (b) A consequence of this inclusive approach is therefore that, if legitimacy is to be enhanced, **stronger and better organised actors must not be unduly advantaged**. Account must be taken of any inequality of resources and compensation offered by public authorities. This compensation could take the form minimally of **legal guarantees** of involvement or more substantially of the **provision of material and cognitive resources** in order to assist actors in specifying their understandings and points of view.
- (c) This 'procedural' understanding of the process of governance or regulation in turn implies that the implementation of eventual solutions is not a one-off exercise but rather inherently includes the **putting in place of evaluative and revision mechanisms** so that there is sufficient flexibility to **accommodate emergent problems, new information and new stakeholders as well as the need to integrate other policies in the process of collective learning**.

To reiterate and reinforce the foregoing points - **in the contemporary context, public authorities must seek to encourage both collective participation and reflexivity**. In this process, such authorities must not restrict the field of action at the outset and must escape from the constraints of the institutional (administrative/expert) construction of both problems and solutions. There must, therefore, be a general concern with **supporting lower level participation rather than with imposing solutions from a higher level**. Only in this way can perceptions change to reflect a fuller understanding of collective problems and only in this way can procedures produce collectively valid outcomes based on the points of view and understanding of all interested actors.

- (d) **If a wide range of public and private actors are, therefore, co-owners and co-constructors of both problems and solutions, there is an apparent need to achieve collective learning**. This process consists in the mutual critique of the perspectives and values which different actors bring to a problem - a result achieved, for example, by obliging actors not only to formulate their positions explicitly but also to explain the effects of those positions on other actors and other aspects of the problem which those actors bring to light. **The role of the public actor then becomes one of creating the conditions for and co-ordinating the process of collective learning**. The focus of attention both for theorists and for practitioners thus becomes the nature of the interaction among stakeholders.
- (e) The solutions arrived at by means of these contextualised modes of governance must also be considered within the broader framework of the general principles of law and of other problems and solutions - that is, **there is a requirement for systemic coherence, for the mutual integration of policies and programmes, for compartmentalisation and segmentation to be transcended**. The necessary coherence can be achieved within contextualised systems of the production and application of rules by ensuring a certain openness to potential conflicts and interdependencies - an openness which can be enhanced, for example, by **recourse to experts who advise on the broader context** (as opposed to providing narrowly-defined solutions as in the traditional administrative model); **involvement of other public actors** (thus transcending the demarcation of competencies); **obligations of transparency; processes of collective decision making; ongoing evaluation; and judicial review**.
- (f) The conclusion drawn for European level actors is, therefore, that there must be a shift away from the centralised, top-down definition of problems and provision of solutions and towards the establishment and support of participative programmes understood in the terms discussed in the preceding points. Public actors by no means abandon their responsibilities in the context of such an approach to governance. However, **instead of assuming the responsibility for developing and implementing an unattainable optimal solution to every problem, the responsibility now lies in framing problems and developing satisfactory solutions in an ongoing process with stakeholders in context**.

Conclusion

In considering institutional reform, therefore, it is a question of asking whether a given option possesses these key features, whether it indicates an adequate understanding of the nature of underlying problems. And **while we have noted evidence that EU and national institutions have already adapted in ways which go beyond the traditional conception of their roles, it will not be sufficient simply to understand these adaptations in appropriate terms and thus free them from the constraints of market-based or interventionist models. The process of reform must be embarked upon more actively, for there are risks in adopting any more hands-off approach.** In this regard, the BSE case was put forward during the project as an example of the ability of both national and EU level actors to reform themselves in response to emergent problems. In terms of a traditional understanding of the process of regulation this is perhaps true. But in the context of the understanding outlined above, such a response can be said to indicate the dangers of complacency and an inability to draw the wider lessons. A range of government actors have indeed reformed themselves as a result of this case with regard to the question of food safety. But they did so only in this field, only in the context of unprecedented public concern and, in the case of the Commission, under threat of strong action from the Parliament. The approach outlined here raises another more pertinent and more far-reaching question for public actors. **Have any of these institutions taken any steps to consider proactively the potential problems which may lie latent behind other administrative arrangements which may be ill-adapted to the co-ordination of policy and the interdependence of problems?** There is little evidence to suggest that they have.

New modes of governance certainly represent a considerable challenge for public authorities in terms of commitment and resources. While the evidence presented during the Governance Project indicated that these modes often appear in response to obvious (sometimes catastrophic) failures of pre-existing forms, there were also suggestions that outwith situations of crisis there is often institutionalised inertia as regards a shift to new regulatory structures. In many contemporary contexts, however, the potential for crisis situations is such that the radical reappraisal of the forms of government action is not a luxury option but rather a pressing need. **The lesson of past experience is that unless the rigid demarcation of competencies and the monopolistic approach to representation is addressed, public authorities in many contexts may well find themselves forced into such a radical reappraisal with the reality of crisis as the backdrop.**

Many of the participants attending this Workshop, it seems to us, share our reading of the situation to a greater or lesser extent though you may propose a different emphasis or different terminology. In addition, it is also significant that the recent resolution of the European Parliament explicitly calls for the more effective participation not only of itself and of national parliaments but also of civil society as a whole in all stages of any future institutional reform. **The challenge and the opportunity for our Workshop will therefore be, on the basis of a shared diagnosis, to indicate in a way that is both adequate and politically acceptable the paths that must be explored in the process of institutional reform and the most appropriate means of their exploration.**

INTRODUCTORY PRESENTATION**Improving Effectiveness and Legitimacy : The Key Issues**

Genval - 21 May 1999

Presentation

The working papers distributed before the Workshop will have provided an indication of the sorts of issues that the Forward Studies Unit has been considering in the context of the Governance Project over the past couple of years. The paper sent to you at the beginning of this week attempted to summarise some of those issues as they impact more directly on the question of institutional reform.

In opening this Workshop, we would like to focus attention as clearly as we can on what we see as the main overarching themes that should act as an initial guide to our discussions. You will see that these are very broad themes but they nevertheless shift attention away somewhat from what appear to be the issues more frequently discussed when institutional reform is on the agenda. The reason for this refocusing is, as has been outlined in the papers distributed, that we do not perceive the institutional reforms on offer as responding to all the sorts of problems and challenges that appear most pressing for the EU.

For example, it is certainly the case that the prospect of enlargement brings with it the need for streamlined decision-making processes such as the extension of qualified majority voting. Equally, enhancing the power of the Parliament may go some way towards addressing the democratic deficit. But will reforms of this nature which improve efficiency and increase the role of directly-elected representatives actually enhance the *effectiveness* and the *legitimacy* of European action in the context of the sorts of issues that have caused both national and European level institutions so many problems recently – issues such as the BSE crisis and a range of other food safety cases, appropriate responses to meet global environmental responsibilities, etc.

It is possible that reforms of this nature may successfully speed the process of taking decisions on complex issues when what is required may be a more cautious step-by-step approach involving more discussion with more stakeholders. Equally, enhancing the role of the Parliament may simply lead to the further crowding of its agenda and a consequent decrease in its ability to prioritise and to ensure a coherent and co-ordinated approach to policies – a fact which must lead to questions about the impact of such reforms on genuine legitimacy and accountability.

In short, it is possible to question whether the diagnosis implicit in the types of reforms most frequently proposed is really sufficient and consequently to suggest that something more is needed. As a starting point for the diagnosis, we would like to remind you of *the key elements* of the papers distributed before the Workshop. Because these are rather general and abstract, in the second part of this presentation we will discuss some of *their implications for the process of institutional reform*.

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- In the face of contemporary problems, public authorities and experts appear more clearly not to have a monopoly on the means necessary either to define them adequately or to deal effectively with them. The content of public action aimed at the attainment of collectively-agreed objectives, therefore, cannot it seems be pre-established outwith the context of application and other than with the collective involvement of stakeholders. **Democratic governance rests accordingly on guaranteeing the participation of stakeholders. The effectiveness and accountability (and thus the ultimate legitimacy) of government action come to be understood as depending upon the constructive inclusion of the plurality of points of view, of perceptions, of interests and of values.** And the precise nature of this participation is crucial. It cannot simply be an opportunity for experts or those holding political or administrative or economic power to ‘educate’ or ‘persuade’ other stakeholders. There must certainly be the possibility for other stakeholders to understand what those in power are proposing but there must now equally be the possibility for those other stakeholders to present their own case and have that actively considered.
- A consequence of this inclusive approach is that, if legitimacy is to be enhanced, **stronger and better organised actors must not be unduly advantaged.** Account would need be taken of any inequality of resources and compensation offered by public authorities. This compensation could take the form minimally of **legal guarantees** of involvement or more substantially of the **provision of material and cognitive resources** in order to assist actors in specifying their understandings and points of view and in comprehending the positions and responses of other stakeholders.
- This ‘procedural’ understanding of the process of governance in turn implies that the implementation of eventual solutions is not a one-off exercise but rather inherently includes the **putting in place of evaluative and revision (feedback) mechanisms** so that there is sufficient flexibility **to accommodate emergent problems, new information and new stakeholders as well as the need to integrate other policies in the process of collective learning.**

To reiterate and reinforce the foregoing points, **in contemporary conditions, public authorities must seek to encourage both collective participation and reflexivity.** In this process, such authorities must not restrict the field of action at the outset and must escape from the constraints of the institutional (administrative/expert) construction of both problems and solutions. There must, therefore, be a general concern with **supporting lower level participation rather than with imposing solutions from a higher level.** Only in this way can perceptions (of all the actors involved) change to reflect a fuller understanding of collective problems and only in this way can governance

mechanisms produce collectively valid outcomes based on the points of view and understanding of all concerned.

- If a wide range of public and private actors are, therefore, co-owners and co-constructors of both problems and solutions, there is an apparent need to achieve *continuous* and *collective learning*. This process consists in the ongoing mutual critique of the perspectives and values which different actors bring to a problem - a result achieved, for example, by obliging actors not only to formulate their positions explicitly but also to explain the effects of those positions on other actors and on other aspects of the problem which those actors bring to light. **The role of the public actor then becomes one of creating the conditions for and co-ordinating the process of continuous and collective learning.** The focus of attention thus becomes the nature of the interaction among stakeholders.
- The solutions arrived at by means of these contextualised and inclusive modes of governance must also be considered within the broader framework of the general principles of law and of other problems and solutions - that is, **there is a requirement for systemic coherence, for the mutual integration of policies and programmes, for compartmentalisation and segmentation to be transcended.** Already the fact of contextualised and inclusive modes of governance means that there is likely to be greater openness to the potential for conflicts and harmful interdependencies. And provided public actors take seriously the role of encouraging and co-ordinating such new modes of governance as processes of continuous and collective learning, many of the problems associated with internal functional differentiation can be reduced. At a practical level, a number of steps can be envisaged to assist public actors in the performance of that role including, for example, recourse to experts who advise on the broader context (as opposed to providing narrowly-defined solutions as in the traditional administrative model); the involvement of other public actors (thus transcending the demarcation of competencies); obligations of transparency; processes of collective decision making; ongoing evaluation; and judicial review ; to name only a few.
- The conclusion drawn for public actors is, therefore, that there must be a shift away from the centralised, top-down definition of problems and provision and implementation of solutions and towards the establishment and support of more participative programmes understood in the terms discussed in the preceding points. To be clear, public actors by no means abandon their responsibilities in the context of such an approach to governance. However, **instead of assuming the responsibility for developing and implementing an unattainable optimal solution to every problem, the responsibility now lies in framing problems and developing and implementing satisfactory solutions in an ongoing process with stakeholders in context.**

Taken together, these elements imply a shift from substantive to procedural regulation.

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It is rather easy of course to list a number of quite general and abstract themes and to recommend that public actors should take account of them in the course of any process of reform. If, however, we try to be a little more practical and, more importantly, a little

more operational as regards this Workshop, we can perhaps narrow our focus to three broad sets of questions and then go on to consider them briefly in terms of examples from practice and of questions which might guide our forthcoming discussions. These three sets of questions are as follows :

- how to bridge the gap between the institutions, the contexts and civil society ; how to enrich the channels of representation, enhance transparency and the means of associating socio-economic actors throughout the various phases of the policy process from the framing of problems through the taking and implementation of decisions to the evaluation and revision of solutions and how to extend accordingly the means of democratic control ;
- how to organise decentralised governance and forms of co-operation among different levels of administration and different stakeholders so that flexibility and responsiveness can be achieved without harming the confidence of the various actors nor the integrity of the European socio-economic space ;
- how to develop new capacities of strategic orientation and of policy integration, especially as regards the central institutions of the EU.

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(a) as regards the **first set of questions**, it is possible to say that this enrichment is already underway at the national and European levels. Information, consultation, opportunities to deliberate collective choices, pluralist approaches to evaluation and better access for social actors to the institutional system of the Union – all of these have been progressively enhanced by new modalities such as Green Papers, forums open to NGOs, hearings, administrative codes of conduct, new modes of involving socio-economic actors in the formulation of research objectives and so on.

It is perhaps through the development of its regional policy and the operation of the structural funds, and through the development of numerous programmes of decentralised co-operation in various fields that the EU and more particularly the Commission has developed the best opportunities and most direct links with civil society. Yet, probably because of the lack of appropriate capacities (both in terms of means and of knowledge) it failed to accumulate and build a memory to maintain and benefit from these networks. Instead, it focused more on formal requirements, disregarding the essence of the projects it was supporting and thus now runs the risk through externalisation of losing these opportunities completely. It is also in the same area that partnership was initially introduced – vertical partnership between different levels of governance, horizontal between different types of actor.

It is nevertheless the case that these evolutions remain somewhat disjointed and insufficient – partnership, for example, has never been defined or codified, neither has consultation. There has never been any systematic consideration of the resources and means needed to implement them in an efficient and meaningful way. And last but not least, there is an absence of any guarantees or of control mechanisms as regards their fairness and effectiveness which rely exclusively upon the good will of the European administrations.

Despite their strong potential with regard to the widely-held desire to bring Europe closer to the citizen, despite the resolution and the proposals of the EP, despite the debate on transparency, these issues are not on the reform agenda.

Some of you present share our intuition that such issues could go a long way towards improving the effectiveness and legitimacy of European governance and have been advancing for some time proposals to develop instruments which can guarantee more systematically such things as prior consultation, the transparency and justification of decisions, and access to justice at all levels – European, national, regional, etc.

These could be given a legal – almost constitutional – basis by the introduction into the Treaties of a charter of political rights (for example, of information, consultation and expression) as well as by a Framework Act containing principles to regulate and guide the action of every authority which is involved in the implementation of European policies. It seems that these proposals are currently echoed to some extent by the Council's President – Bundesminister Fischer mentioned before the EP his government's intention to propose the introduction of a new chapter into the Treaties on the political rights of citizens of the Union.

The implementation of these rights and obligations as well as the control of their exercise would no doubt require the introduction of new mechanisms and would have implications for the role and function of the European institutions. The Economic and Social Committee and the Committee of the Regions, for example, could be given a role of channeling and regulating consultation processes. The EP Committees, the ECJ and the national administrative courts could see themselves given a role of procedural regulators and controllers respectively :

- of the Commission in the exercise of its task of making proposals ;
- of the groups that advise or control the Commission in its executive capacities, the working groups of the Council (where more than 90% of European decisions are taken almost behind closed doors and of which the composition, functioning and relations with other institutions and actors – insofar as they exist – are almost self-regulated) ; and finally
- of the national administrations and regulatory authorities who transpose and implement common decisions

Shouldn't these paths be better explored ? What are the legal, political and institutional obstacles ? What arguments can be most fruitfully deployed in favour of this perspective ? What are possible options ? Do we think that the forthcoming debate represents an opportunity to advocate such reforms ?

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(b) as regards the **second set of questions**, relating to decentralisation and the development of new forms of co-operation among actors, it is again possible to say that an evolution is underway. At the European level we can refer most readily to the development of agencies in such fields as the environment, occupational health and safety, and medicines. These have an important role to play as the EU has moved from a logic of the market to a logic of protection and especially as it has moved from a position of progressive *de facto* involvement in a range of fields associated with the completion of

the internal market to a position of *de jure* involvement in many fields on the basis of explicit obligations. This move has brought with it a considerable increase in the demand for detailed expertise on the part of EU institutions, notably the Commission, and the development of agencies has been a means of coping with this demand. That said, the power delegated to agencies has been in some respects rather limited insofar as their primary role has been the collection of data and provision of information. Nevertheless, their ability to focus on detailed questions represents a considerable advance over the higher level actors.

Agencies in the European context are of interest under this heading for another reason. While they are able to solve the expertise problems encountered at higher levels, the fact of their decentralisation means that they run the risk of being isolated and thus the danger arises that the credibility gains they offer may not be realised. In particular, their isolation can leave them vulnerable to political interference or even to capture by powerful interests as has happened on occasion in the US. The way in which the European agencies have responded to this problem is by developing networks of similar bodies in the MS as a means of providing mutual support and developing a 'community of views'. This helps to bolster reputations and develop long-term commitments to a given policy area.

It is possible to see in this example the way in which reforms of the sort envisaged under this heading can successfully occur almost spontaneously in response to problems encountered. That said, the picture is not all rosy. For one thing, the network arrangements for all their flexibility are not regulated. Further, the very focus demanded of the agencies can mean that they contribute to the problem of segmentation while addressing the problem of expertise. How can we be sure that they are open to the possibility of conflicts and interdependent problems as they concentrate on their own policy area? How can we be sure that in collecting data and providing information they are not hide-bound by single expert models and thus blind to other perspectives which may have equal claim to a hearing and may even have vital information to impart?

In short, for all the potential flexibility and responsiveness offered by agencies and their networks, serious questions remain as to their ability fully to address the kinds of issues we are immediately concerned with. Beyond that, it is possible to say that questions arise as to their ability to meet the demands of democratic accountability.

It is accordingly the case that in examining new modes of decentralised governance and new mechanisms for associating actors we need to look also for the obstacles and the problems as well as the opportunities. Considering agencies and networks, it may be possible to look to the US experience for assistance. Might a European APA be the answer, for example? What mechanisms could be envisaged to improve the transparency and the openness of the processes surrounding these entities? How can the expertise benefits be retained while ensuring the contribution of agencies to overall policy coherence? What are the institutional design options? How will these new entities be embedded in the Union's institutional system?

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(c) Turning now to our **final group of questions** – when the objectives set for public actors were relatively limited it was a fairly straightforward matter to ensure that the range of policies pursued were well co-ordinated and coherent and that they conformed to a clear overall strategy. As the responsibilities either taken on or imposed upon public actors have steadily increased the impression is that public actors are no longer able to ensure coherence and co-ordinate policies and that different functional sub-divisions follow their own paths. The opportunities for deliberation about alternatives and formulation of strategies have diminished. The net effect is a perceived loss of control of the long-term trends and evolutions that now have the greatest impact upon our lives (such as technological development, globalisation, etc.), a fact which has severe effects on the credibility of our institutions and political system.

The challenge presented by this state of affairs is common to all public actors that are internally differentiated along sectoral lines. But the challenge is all the harder for the European institutions given the added complexity and diversity of the situation they find themselves in and the various levels and actors involved. The EU institutions appear to spend a great deal of time occupied in activities – notably the discussion of budgets – which do nothing to address this most pressing of problems.

It should be clear from some of the factors considered under the previous heading, however, that the solution to this problem does not lie in attempts to tighten up the control exercised by the centre. The complexity of contemporary problems is such that they strain the cognitive and material resources of any one actor beyond their limits.

Instead, the aim must be to increase the opportunities that exist at all levels and at all stages of the policy process for transparency, mutual openness, meaningful deliberation, evaluation, priority-setting, the construction of shared visions, and so on – only by such means can different policies be continuously exposed to scrutiny for unforeseen impacts on other areas, can public actors be presented with an increased range of possible solutions, can the policy process operate as the mechanism of continuous and collective learning that is required if legitimacy, accountability and effectiveness are to have a chance of significant improvement. Nor must such developments be restricted to a limited range of policy areas. The BSE case, for example, demonstrated what can happen when policies are developed in isolation from each other and it is by no means hard to find other examples where interdependencies and consequent risk possibilities are evident.

The challenge then is to discover examples of the most successful practice in this regard. Can lessons be drawn from the approach to the coherence of other policies with environmental objectives developed during recent years since the insertion of that requirement by the Maastricht Treaty – a requirement now also added with regard to employment or consumer protection by the Amsterdam Treaty. This integrated strategy required every policy (industrial, agricultural, transport, etc.) to give an account of its environmental orientation and specify which instruments and indicators it had developed to achieve it. This strategy was recently given new impetus at the Cardiff summit where various sectoral Councils of Ministers were asked by the Heads of State to give an account of what progress had been made and what proposals they had in this regard. Can this approach be transposed to other policy areas and how? What sort of organisational reforms would be required to increase the capacities of the institutions with regard to priority and agenda setting, meaningful deliberation and evaluation of policies? Does multi-lateral surveillance of macro-economic policy provide any equivalent lessons?

- enrich the channels of representation ; develop new hybrid and ad hoc forms ; associate socio-economic actors and stakeholders throughout the various phases of the policy process from the framing of problems through the taking and implementation of decisions to the evaluation and revision of solutions ;
- organise decentralised governance and networking among different levels of administration and stakeholders without harming the integrity of the European space ;
- develop new capacities to ensure coherence, strategic orientation and policy integration.

These seem to us to be the key dimensions which must be explored. The solutions that may be found along them may have legal, institutional or simply administrative and organisational implications. You may therefore feel that we have come close to if not actually crossed the strict boundaries of the subject of institutional reform. We hope at least that our work will show that we have not crossed the boundaries of improving the legitimacy and effectiveness of European governance.

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