



How much is known about the « Community Method » ?
CONNEX Workshop
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Convenor: Renaud DEHOUSSE (RG6)
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WORKSHOP REPORT

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“New” modes of governance are usually defined in opposition to the traditional “Community Method”. But how much is actually known about the latter?

Background

The 50th anniversary of the Treaty of Rome has been an occasion for celebrations during which many of the EU's accomplishments were attributed to the invention by the Founding Fathers of an original institutional setting, often referred to as the “Community Method”. The basic elements of the model are well-known: the transfer of legislative powers to the EU, the creation of a “supranational” executive, the European Commission, the possibility to vote in order to adopt binding legislation, and the enforcement powers vested in the European Court of Justice. One of the most remarkable elements of that international regime has been its stability. 50 years on, despite a significant enlargement of the number of member countries and several treaty revisions, it may be argued that the key features of the system have remained unchanged. The European Parliament has gradually acquired significant prerogatives, but there has been an attempt to prevent this evolution from altering the balance of power. Indeed, the need to preserve the essence of the Community Method is often used as an argument against proposed changes: during the drafting of the constitutional treaty, for instance, a group of convention members chose to present themselves as “friends of the Community Method”.



This notwithstanding, our understanding of that system remains at best fragmentary. The formal rules are known, but their actual impact is not. How effective is the Commission as an agenda-setter? What is the actual impact of qualified majority voting? Are the Commission's surveillance power and the Court's adjudication role sufficient to ensure a correct implementation of EU law? There is no shortage of interesting hypotheses in relation to the overall efficiency of the Community Method, but empirical research is still scarce. The purpose of this workshop is to bring together a number of scholars who have been working on these issues and confront their views with those of practitioners, in order to improve our knowledge of the operation of European institutions, and to identify issues in relation to which further research is needed.

Programme

9. 30. Welcome

- “Majority Voting : The Practice and its Impact on EU Decision-Making Effectiveness” : Helen Wallace, London
“Why Don't Member States Use their Veto Power ?” : Thomas König, Mannheim
- The Commission's power of initiative:
“In the Shadow of Hierarchy : The Commission and the Community Method”: Laura Cram, Strathclyde
“The Commission's Agenda-Settings Powers between Executive and Judicial Policy-Making”: Susanne Schmidt, Bremen

11h15. Coffee Break in the Cafeteria

- Role of Law in EU policies:
“How can the Rule of Law Survive the Turn to Governance ?” Christian Joerges, Bremen,
“Social Europe : Still binding regulations ?” : Philippe Pochet, Brussels

12.30 Pause

14.15

- “The European Parliament’s Policy-Making Role”: Olivier Costa, Bordeaux
- “Is the EU Really a Decentralized Implementation System?” Mark Thatcher, London
Discussant: Morten Egeberg, Oslo
- "Implementation of EU Policies: the Community Method's other Side of the Coin?":
Gerda Falkner, Vienna

16h00. Coffee Break in the Cafeteria

- Alternatives to the Community Method: How effective?
 - “The Political and Security Committee : a case-study in supranational intergovernmentalism ?” : Jolyon Howorth, New Haven & Paris
 - „Alternatives to the Community Method in EU Justice and Home Affairs“: Jörg Monar, Strasbourg
 - „Is the OMC an Alternative to the Community Method ?” : Jonathan Zeitlin, Wisconsin-Madison
- "The Community Method: Is It Still Viable?" : Giandomenico Majone, Florence

General discussants: Giuseppe Ciavarini-Azzi, Brussels; Mark Pollack, Temple University; Paolo Ponzano, Brussels; Michael Shackleton, Brussels

18.00 End of meeting



SUMMARY OF CONTRIBUTIONS

Helen Wallace: *Voting Practice and Consensus in the EU Council and their Impacts*

Helen Wallace's contribution focused on voting practices in the EU Council and their impacts on the functioning of EU institutions. The author provided interesting insights on the state of recent research. The following findings were highlighted: a) a significant proportion of agreed Council decisions (some 30% p.a. of total) emerge on issues subject to the unanimity rule; b) explicitly contested votes on agreed legislative decisions subject to the Qualified Majority Voting (QMV) rule have been relatively rare; c) explicit contestation is recorded particularly on issues relating to agriculture, fisheries, and increasingly single market regulation, with a recent increase on transport issues; d) explicit contestation seems to be especially linked to domestic signalling; e) contestation may be expressed in other ways than recorded votes, thus by formal statements in Council minutes; f) coalition patterns remain hard to establish from the recorded votes and the scholarly literature is divided on where the cleavages lie, some asserting a north/south cleavage, while others argue for a left/right cleavage; g) "consensus" formation on issues subject to QMV is strongly preferred at ministerial level discussions when new legislative proposals are being adopted; and h) issues subject to co-decision by the European Parliament and the Council are increasingly adopted at first reading, albeit sometimes more slowly than before. On the basis of these findings, Helen Wallace offered some "speculative" conclusions and, in particular, those concerning: i) the assignment of decision-rule in the Council seems to make much less of a difference to how the decision emerges than is widely assumed; ii) the patterns of behaviour, decision-mode and productivity of the Council have remained remarkably stable over the past decade or so in spite of three successive enlargements (1995, 2004, 2007); iii) paradoxically the introduction of transparency provisions in the early 1990s may have driven the evidence of contestation underground; iv) recent research confirms earlier and long-run qualitative research that held EU negotiations to be an iterative multi-level process; and v) it would be valuable to have some studies which would compare and contrast the influence/impacts of different mechanisms and non-member state actors on the dynamics of negotiations in the Council.

Thomas König and Dirk Junge: *Why don't Veto Players use their Power? Member State Consensus and the Unit of Analysis*

Thomas König's and Dirk Junge's contribution focused on two strictly-related questions: Why do member states with veto power usually agree on a Commission initiative when they are located closer to the status quo? Why do we often find consensus in the Council of Ministers and rarely a rejection of a Commission's proposal even after additional veto players have joined the EU? According to the authors, although consensus can hardly be explained by decision-making theories, the conditions under which member states always vote in favor of Commission proposals and not use their veto power against the adoption of a Commission proposal are a subject still under-investigated. Compared to the results of previous veto player studies on the power distributional implications of institutions, the authors' main findings suggest that institutions provide an additional organizational feature for decision making by promoting logrolling opportunities within and across policy domains. The conclusion is that member states have established a three-level committee system which organizes decision making in the following way: At the lowest level, the working groups attempt to coordinate proposal-specific interests, while both the COREPER and ministerial level promote logrolling which increases the EU's potential for policy change.

Laura Cram: *In the Shadow of Hierarchy : The Commission and the Community Method*

Laura Cram's contribution put a special emphasis on the Commission and the Community Method. In particular, the author discussed whether the Commission should still be addressed as operating on the Member States' "shadow of hierarchy" with members able to limit the range of formal competences available to it or whether the Commission now constitutes an intrinsic element of the "governmental machinery" of the EU polity and, thus, forming part of the "hierarchy" itself. Laura Cram's main argument is that the Commission has now capitalized upon and encouraged the enthusiasm for "new modes of governance", while actively promoting a narrative or "fiction" concerning their purported association with improved democracy and legitimacy. In this way, the Commission has managed to create a central role for itself in previously untouchable preserves of the member states while also generating a constituency of

support for further action in these areas. According to Cram, the Commission has, in short, made good use of “governance” as a tool of “government”.

Susanne Schmidt: *The Commission’s Agenda-Settings Powers between Executive and Judicial Policy-Making*

Susanne Schmidt’s contribution investigated the Commission’s agenda-setting powers between executive and judicial policy-making. The author’s main argument is that these powers are misrepresented if an isolated view is taken, focusing only on the institutional triangle between the Commission, the Council and the European Parliament. By contrast, at times when legislative decision-making stalls, the European Court of Justice can take over, shaping European Integration through judicial policy-making. Since the political system of the European Union exhibits specific characteristics that set it apart from the logic of national policy-making, it might be mistaken to analyze European legislative decisions analogously to domestic legislation. Susanne Schmidt’s main conclusion is, in fact, that while the political influence of the Commission is strictly circumscribed when regarding its agenda-setting, the Commission can be a very important political actors if it uses its executive powers and its access to the European Court of Justice in combination with its agenda-setting rights.

Christian Joerges: *How Can the Rule of Law Survive the Turn to Governance ?*

Christian Joerges’ contribution focused on the very important question of how can the rule of law survive the turn in European governance. Based on the concept of “Deliberative Supranationalism” (Joerges ad Neyer 1997) as well as Jürgen Habermas’ discourse theory, the author affirms that it is still possible to embrace the turn towards European governance without abandoning rule of law modalities. In particular, Joerges states that the type of law-mediated legitimacy to which constitutional democracies are committed and which they can ensure through proceduralised law without obstructing the turn to governance calls in post-national situations for another turn; namely a “conflict of laws” approach to transnational governance in general and European governance in particular. On the basis of such a conflict of laws conception of European law, not only can the latter’s effect on national law be legitimized in a way compatible

with democracy, but also the new (and not so new) forms of European governance can be demarcated and constitutionalized adequately.

Philippe Pochet: *Social Europe : Still Binding Regulations ?*

Philippe Pochet's contribution had its focus on "Social Europe" and, more specifically, it discussed whether social law regulations in the EU can still be addressed as binding. The author's main argument and conclusion is that there is little empirical evidence for the now dominant discourse according to which it is impossible to adopt binding regulations in this sector. In particular, Philippe Pochet demonstrates that the second half of the 1990s and the first years of the new century were, to a greater extent, characterised by a mix of different modes of governance than by a complete move from hard to soft law. This hybridity is now a key feature of the European social laws integrating different actors - government, social partners and ONG - in the implementation of the directive. According to Pochet, the information/consultation mode of governance could be considered as a good example of "reflexive law", where the most advanced example is the anti-discrimination directive.

Olivier Costa: *The European Parliament's Policy-Making Role*

Olivier Costa's contribution dealt with the European Parliament's (EP) policy-making role and, in particular, it asked which was the impact of the enlargement on the EP activities and functioning procedures. On the basis of an in-depth investigation of legislative, budgetary and deliberative efforts, the author demonstrated that, despite the pessimism of many observers, the EP has, so far, succeeded to preserve its "functional capacities" (capacités fonctionnelles). There are three main elements called into question to explain this rather unexpected result. First, the high degree of rationalization of the assembly's activities, which has forced EP members to respect the expected deadlines. Second, phenomena of socialization and institutionalization of EP members into the EP bureaucratic structure has led to institutional fidelity and compliance to its procedures (the EP bureaucracy has not turned Euroskeptics into Europhiles but into deputies who respect its institutional rules). Third, the new deputies were integrated in an inter-institutional logic, which remains the basis of the EU political regime.

Mark Thatcher: *Reshaping European Regulatory Space: An Evolutionary Analysis*

Mark Thatcher's contribution examined European institutions for implementing EU regulation. It set out seven different models that have been used or discussed for organizing those institutions. The author argues that the development of European regulatory space has followed an evolutionary development involving gradual reshaping through a series of steps, with previous stages influencing later stages and institutions being built on existing structures. Despite pressures and frequent discussions of comprehensive change, existing organizations have managed to limit and shape reforms. The result has been institutional 'layering' and 'conversion' instead of streamlining, and a gradual strengthening of networks of national independent regulatory agencies. The investigation therefore suggested that evolutionary analysis based on historical institutionalist approaches seems highly appropriate to the EU. Equally, it demonstrated how even if there are strong demand-side pressures for centralization of regulation, existing institutional arrangements and organizations limit and shape the supply of new institutions, so that debates about radical change coexist with a fragmented, cluttered and complex European regulatory space.

Jolyon Howorth: *The Political and Security Committee: A Case-Study in Supranational Intergovernmentalism?*

Jolyon Howorth's contribution focused on the Political and Security Committee (PSC) asking whether we are now in front of a new form of supra-national intergovernmentalism. Howorth raised four crucial issues. The first one is with regard to the political and strategic reasoning behind the launch of the PSC in 2000 in a context marked by the proliferation of other institutional actors in foreign and security policy. In his investigation, it was noted the existence of divergent interpretations, in different national capitals, of the committee's objectives and rationale. The second issue concerns the socio-political profile of the committee's individual members based on structured interviews and a questionnaire. These data have revealed an intergovernmental body composed of national representatives who are deeply committed to the cause of European integration. The third one is with regard to some of the key issues in European

Security and Defense Policy (ESDP) which the PSC has to grapple. A number of case studies of decision-shaping in action were analyzed by the author, demonstrating the gradual emergence of the PSC as a crucial decision-maker and profile-former for ESDP and, to a certain extent, Common Foreign and Security Policy (CFSP). The fourth issue, finally, is with respect to the strong socialization processes which inform the debates and decisions of the committee. The working practices of the PSC were scrutinized and the ways in which they have evolved during the tenure of three distinct generations of ambassadors carefully noted. This offered a case study in complex decision-making about ESDP operations and it evaluated the specific role of PSC in constructing the “security identity” of ESDP.

Jörg Monar: *Alternatives to the Community Method in EU Justice and Home Affairs*

Jörg Monar’s contribution discussed possible alternatives to the Community Method in Justice and Home Affairs (JHA). Due to the Member States resistance to transfer authority on sensitive internal security affairs, JHA remains, in fact, a highly hostile territory for the application of the Community Method. According to Monar, however, this does not mean that useful deviations from and alternatives to the Community Method are not possible. In particular, these could involve, as it is already taking place in the light of the Amsterdam reforms of the so-called “old third pillar” of the Maastricht Treaty, the use of different non-binding target setting texts, co-decisions, “opt-out” options, peer-review procedures or other lighter forms of European governance.

Jonathan Zeitlin: *Is the OMC an Alternative to the Community Method ?*

Jonathan Zeitlin’s contribution was aimed at elucidating whether the Open Method of Coordination (OMC) is still a feasible alternative to the Community Method. The author presented two papers. *Learning from Difference: The New Architecture of Experimentalist Governance in the European Union* (co-authored with Charles F. Sabel) had a special focus on new forms of “experimentalist governance” that are taking place in the European Union. In particular, this paper argues that current widespread characterizations of EU governance as multi-level and networked overlook the emergent architecture of the Union’s public rule making. In this

architecture, framework goals (such as full employment, social inclusion, ‘good water status’, a unified energy grid) and measures for gauging their achievement are established by joint action of the Member States and EU institutions. Lower-level units (such as national ministries or regulatory authorities and the actors with whom they collaborate) are given the freedom to advance these ends as they see fit. But in return for this autonomy, they must report regularly on their performance and participate in a peer review in which their results are compared with those pursuing other means to the same general ends. Finally, the framework goals, performance measures, and decision-making procedures themselves are periodically revised by the actors, including new participants whose views come to be seen as indispensable to full and fair deliberation. In a second paper, *A Decade of Innovation in EU Governance:*

The European Employment Strategy, the Open Method of Coordination, and the Lisbon Strategy, the author investigated the origins and development of the European Employment Strategy (EES) and the OMC as innovative governance tools for the EU, while reviewing the findings of empirical research on the national influence and effectiveness of the OMC in action. Jonathan Zeitlin went on in his analysis discussing the criticisms of the OMC raised by the mid-term review of the Lisbon Strategy, together with the revised governance architecture introduced by the 2005 relaunch. Zeitlin proposes a set of possible reforms to the next cycle of the Lisbon Strategy aimed at correcting the problems experienced by the relaunch in two key areas. These correspond to: (a) strengthening its social dimension; and (b) reviving the European Employment Strategy.

Giandomenico Majone: *The Community Method: Is It Still Viable?*

Giandomenico Majone discussed the general, but still very important question about the viability of the Community Method after the recent waves of the EU Enlargement. After an in-depth investigation of its effectiveness, legitimacy and system-stabilizing capacities, Majone draws the following conclusions. First, the Community Method will be needed also in the future, but its scope should be largely restricted to negative integration (such a restriction will reduce the democratic deficit). Second, an extensive body of both theoretical and empirical literature confirms that harmonization, particularly of social standards, is not necessary for international

trade to be ‘fair’ or undistorted. Market integration is, according to the author, not an absolute value, but (supposedly) a means of increasing the welfare of the citizens of the Union. In some policy areas market integration has been sacrificed to social concerns or to political expediency. As a result, laws on minimum wages, collective bargaining, hiring and firing, duration of the working week, flexible labor contracts, qualifications, and a host of other factors continue to differ among the member states. But if market integration is not an absolute value, then it follows that the necessity of positive integration should not be assumed, but must be determined in each particular case. One suspects that in the past too many harmonization claims were driven by a political agenda rather than by genuine concerns about the integrity of the Single Market.

Gerda Falkner: *Implementation of EU Policies: the Community Method's other Side of the Coin?* **MISSING PAPER**

Paolo Ponzano: *The New “Reform Treaty”*

Paolo Ponzanos’ contribution provided an analysis of the main institutional features of the New “Reform Treaty” as agreed by the Member States after the rejection of the 2004 Constitutional Treaty. On the basis of an accurate investigation of the formal changes but also of the changes in its substance, the author concludes that most of the substance of the Constitutional Treaty (almost 95%) have been maintained in the new reformed version. While avoiding most of the provisions with a clear “constitutional flavour” (such as the reference to the Charter of Fundamental Rights) as well as allowing “opt-out” options for some Member States (notably the United Kingdom), the New “Reform Treaty” seems, in particular, to be made to: a) reassure the public that this is not a fundamental change to create something of a constitutional nature, but a continuation of the traditional method of revising the existing Treaties (so no European Constitution set in stone); b) justify for domestic purposes the choice of a Parliamentary ratification procedure rather than a referendum, at least in countries where there is no legal or political need for a referendum (see above); and c) have at any rate a reform Treaty containing only the amendments to the existing Treaties so that any breakdown in the ratification procedure will not compromise all the existing Treaties but simply stop ratification of the innovations to those Treaties.