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**Governance in the European Union
and the Commission White Paper**

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PREFACE

We should acknowledge, as Niklas Luhmann has famously taught us, that modern societies are functionally differentiated. We should hence not even try as academics to interfere with the political system – and vice versa. We are also aware of the *problematique* of the European public sphere. Europe remains divided into many nation state-based societies; there is no European public, not even for European issues.

True though this may all be, it is however also true that the European Commission, when launching its White Paper project with a view to developing prospects for democratically reformed “European Governance”,¹ did very actively involve numerous academics from all over Europe.² It is equally noteworthy that the White Paper, as finally released on 25 July 2001,³ was widely discussed in both political and academic quarters.

The European University Institute has furthered the academic debate quite actively.⁴ The workshop documented here followed a seminar series organised by Christian Joerges and Karl-Heinz Ladeur with an ambitious programme and prominent guest speakers.⁵ All such efforts are of course but very modest responses to the challenges Europe has to address. The workshop organisers and the EUI researchers who participated, however, found this effort worthwhile. We wish to thank our guests and contributors for their presentations of the documents reprinted here, for their readiness to listen to the messages from the academic world and to engage in boundary-crossing discussion.

And we would like to thank Ms. Larisa Dragomir, PhD Researcher from Romania, for her help with the organisation of the Workshop and the editing of this Working Paper.

Florence, March 2002

Christian Joerges/ Karl-Heinz Ladeur/ Jacques Ziller

¹ Cf., especially, the Commission’s Working Programme on “Enhancing Democracy in the European Union”, SEC (200) 1547, 7 final 11 October 2000, <http://europa.eu.int/comm/governance/work/en.pdf>; the ongoing work was documented on the website

<http://europa.eu.int/comm/governance/index/en.htm>. See also O. De Schutter/N. Lebossis/J. Paterson, (eds.), *Governance in the European Union*, (Office for Official Publications, Luxembourg, 2001).

² The websites cited in note 1 now contain the concluding reports of the 12 Working Groups which have supported the Commission’s Governance Team.

³ COM(2001) 428. The document is reprinted in Annex 1.

⁴ Cf. Christian Joerges/ Yves Mény/ J. H. H. Weiler (eds., Inge Burgess, Chris Engert, assoc. eds.), *Mountain or Molehill?, A critical appraisal of the Commission White Paper on governance*, Robert Schuman Centre for Advanced Studies, EUI, Florence/ The Jean Monnet Program, Harvard Law School and NYU School of Law 2001, also at <http://www.iue.it/RSC/Governance> and <http://www.jeanmonnetprogram.org/papers/01/010601.html>. See also the references in Annex 4.

⁵ The Programme is reprinted in Annex 4.

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LA GOUVERNANCE EUROPEENNE: ENTRE REFORMES ADMINISTRATIVE ET INSTITUTIONNELLE. ARTICULATION COHÉRENTE OU BRICOLAGE FORTUIT ?

Xénophon A. Yataganas**

1. Introduction

Si on veut situer et comprendre le Livre Blanc sur la Gouvernance Européenne, nous devons avoir en tête la conjoncture générale et les circonstances particulières, qui ont entourées la Commission au début du mandat du Président Prodi : l'amertume qui a fait suite aux événements menant à la démission collective de l'équipe précédente, la crise de confiance diffuse des citoyens envers les institutions européennes, la Commission en premier lieu, et l'absence relative de cette dernière lors du débat dans le contexte de la récente CIG, qui a abouti au Traité de Nice.

Pour répondre à cette conjoncture défavorable et pour colmater ses propres carences, la Commission a décidé d'occuper le terrain dans tous ces domaines.

2. Les trois exercices en cours

C'est ainsi que trois niveaux de changement se trouvent actuellement en cours dans l'UE : **la réforme administrative** de la Commission (et des autres Institutions) pour expier un passé encombrant, la mise en oeuvre du Livre Blanc sur la **gouvernance européenne** (à traité constant) pour faire rapprocher les institutions des citoyens et **la réforme de l'architecture institutionnelle**, qui nécessite une révision - certains disent « de nature constitutionnelle »- des traités. En dépit des affirmations rassurantes qu'il s'agit de trois exercices différents, distincts et complémentaires, force est de constater que les trois procédures interfèrent et se chevauchent.

* Conseiller Juridique à la Commission Européenne. Les thèses exprimées dans ce texte sont celles de l'auteur et ne représentent pas celles de son Institution.

Ainsi, **la réforme administrative des services de la Commission**, produit de l'expérience traumatisante de la démission de l'équipe Santer en Mars 1999, annoncée par le nouveau Président R.Prodi et pilotée par le Vice Président N. Kinnock, semble avoir des objectifs se situant à plus long terme que les déclarations officielles pourraient nous faire croire. S' il est indiscutable que la gestion financière directe de la Commission laisse à désirer, il reste néanmoins douteux de faire dépendre le regain de crédibilité de l'Institution d'une réforme purement administrative. Des voix, à l'intérieur même de la Commission,⁶ se sont élevées pour mettre en évidence le paradoxe d'attribuer tous les maux de la maison à des dysfonctionnements de caractère purement administratif. Ces voix faisaient remarquer, à juste titre, qu'il faut chercher les racines de la malaise plus loin, et notamment en une manque de direction politique dans une conjoncture de politisation croissante du système institutionnel. Et, malgré que ce point ne fut contesté par personne, il est déjà curieux de constater qu' une simple réforme administrative des services de la Commission s'élève, en même temps, au niveau d'un instrument primordial en vue de sa modernisation. Et plus clairement encore, on peut difficilement comprendre le fait que, malgré la décision juste sur la possibilité d'externaliser l'exécution budgétaire et partant sur la possibilité de la gestion financière d'une série d'actions communautaires par des autorités administratives indépendantes (agences), on déploie, simultanément, des efforts considérables pour transformer un grand nombre des fonctionnaires européens en « financial managers ».

Aussi, nous pouvons difficilement expliquer la frilosité en ce qui concerne la délégation des compétences d'exécution limitées et bien encadrées à ces autorités administratives indépendantes, quand il est évident qu'une Commission politisée ne peut pas être en même temps régulateur/législateur chargé d'exécuter elle-même les règles propres qu'elle a édictées. Par conséquent, on pourrait conclure qu'il n'y a pas, au moins, une ligne directrice claire. Et ceci, si on évacue, pour le moment, la probabilité des plans délibérés mais inavouables, qui veulent l'évolution de la Commission d'une institution de conception et de mission qui fut traditionnellement, vers un secrétariat exécutif du Conseil européen et des Conseils des Ministres.

Dans **le Livre Blanc sur la Gouvernance Européenne**, les mêmes flottements sont perceptibles. Le doute à propos de la nature politique de la Commission, administration indépendante de haut niveau ou exécutif politique, se propage dans toutes les propositions. C'est seulement ainsi qu'on peut expliquer l'hésitation constante entre l'effort désespéré de sauvegarder toutes les compétences d'exécution du Collège (y compris celles de nature purement administrative), tout en gardant ouvert l'horizon incertain et confus d'un vrai

⁶ Cf. Le papier préparé à l'initiative des deux Directeurs Généraux MM. Landaburu et Lamoureux, qui a conduit à la présentation des leurs démissions non acceptées.

gouvernement européen. Au sommet de cet iceberg se trouvent les domaines de la concurrence et de la sécurité alimentaire.

Quant à **la politique de concurrence**, il est expressis verbis exclue de la décentralisation, sous prétexte que le traité ne le permet pas, tandis qu'il devient de plus en plus évident qu'un organe politique peut difficilement prétendre édicter les règles et les appliquer, jusqu'au stade final d'imposition des amendes aux particuliers, qui les violent. **La première tâche relève du politique, la seconde de l'administratif.** Une institution ne doit et ne peut pas s'occuper des deux à la fois.

Quant à **la sécurité alimentaire**, il est clairement dit que seule l'analyse du risque (risk assessment) peut être déléguée à des autorités indépendantes, tandis que la gestion du risque (risk management) doit rester entre les mains des commissaires. Ceci signifie que l'institution politique se charge d'une quantité croissante de décisions hyper-techniques, qui rendent, de surcroît, sa **responsabilité politique boiteuse**, du fait que les commissaires sont manifestement incapables de maîtriser la teneur de leurs propres décisions.⁷

Et les mêmes hésitations s'étendent jusqu'aux contours du débat imminent dans le sein de la Convention et de la future CIG pour **la réforme des institutions et la modification des traités.**

Le rapport introductif lors du Séminaire récent de la Commission en la matière est nettement défensif. Le sentiment qui se dégage est que les prérogatives du Collège sont en danger et qu'il faut les protéger. Il serait nettement préférable que la Commission accepte d'emblée que la démocratisation des Institutions constitue l'enjeu principal des futures négociations et qu'elle essaie de circonscrire sa propre position dans ce processus inévitable. Contrairement à une telle approche, nous y assistons à un pro domo plaidoyer, dans lequel le maintien des pouvoirs de la Commission est considéré la garantie majeure à l'égard de la poursuite de ce processus.

⁷ Il est évident que personne ne souhaite déléguer des décisions mettant en cause des arbitrages subtiles et compliqués entre des intérêts conflictuels débouchant sur des choix politiques majeurs. De telles décisions peuvent être carrément exclues ou soumises à un pouvoir d'évocation générale (call-back).

3. L'articulation des trois exercices.

On peut être d'accord sur le recentrage des institutions à leurs compétences de base : le Conseil et le Parlement aux compétences législatives et la Commission à celles de caractère plus spécifiquement exécutives. Mais, comment ?

Manifestement, la Commission n'est point un gouvernement responsable. Elle n'émane pas de la représentation populaire, ni même du Conseil des ministres et elle n'est pas politiquement responsable devant eux. Elle est nommée par les Etats membres à l'unanimité, dont les gouvernements élus constituent l'ultime légitimité de l'édifice communautaire. Et quand nous parlons de compétences exécutives, qu'est-ce qu'elle recouvre exactement cette notion ? Ne déborde-t-elle pas assez souvent sur le domaine législatif ? Ce n'est pas ici qu'elle réside la ratio legis de l'article 202, selon lequel le Conseil peut se réserver les compétences exécutives qu'il juge susceptibles d'être exercées par lui-même ? Est-ce qu'il serait défendable ou souhaitable qu'un corps qui échappe au contrôle politique démocratique puisse exercer des fonctions quasi législatives, même en présence de la fameuse disposition sur la motion de censure, qui n'a jamais été véritablement appliquée ?

En un sens, **la Commission actuelle est exactement le contraire d'un gouvernement élu, le contraire, c'est-à-dire, d'un pouvoir exécutif tel qu'on le connaît dans tous nos Etats membres.**⁸ On fait un effort particulier pour que toutes les familles et les sensibilités politiques européennes y soient représentées, elle fonctionne, essentiellement, de manière consensuelle tandis que l'axe de son action est l'intérêt général européen et non pas des priorités nationales ou partisans. A l'exception de l'initiative législative, la Commission présente toutes les caractéristiques d'une administration (bureaucratie) de haut niveau et non pas celles d'un exécutif politique.

De temps à autre, dans le cadre de la discussion sur le fameux **déficit démocratique** des institutions européennes et surtout à cause des conjonctures pressantes, on opère des injections de logique parlementaire dans un édifice qui comporte un lien trop édulcoré avec cette pratique. Ainsi, l'extension des pouvoirs du Président de la Commission fut la réponse à l'épisode « Cresson », comme sa désignation à la majorité des Etats membres fut la réaction aux difficultés survenues lors de la nomination de l'équipe Santer. Par ailleurs, le renforcement de la place du Président dans le sein du Collège, répond aux craintes qu'une Commission hydrocéphale après le prochain élargissement ne sera guère opérationnelle. La présidentialisation progressive de la Commission

⁸ Cf. L'audition récente de Mr Valéry Giscard d'Estaing devant le Parlement, où il a défendu des thèses similaires.

que –soit dit en passant- constitue un des éléments de la tendance plus générale de la politisation de toutes les institutions communautaires, se présente ainsi davantage comme une réaction spontanée à des difficultés de parcours, que comme une partie intégrante d'un dessein institutionnel global et cohérent.

Dans cette même optique, on réfléchit maintenant sur une élection éventuelle directe du Président de la Commission.⁹ Même dans le cas où ceci se fasse indirectement, via le Parlement, quelles en seraient les conséquences ? Ne comporterait-il pas un changement qualitatif ? Sûrement, il y aura une rupture avec la notion de collégialité et surtout avec l'indépendance de la Commission, puisque le Président, et partant les commissaires, ils seront désormais les mandataires d'une majorité parlementaire ou populaire. Je prétends qu'une telle démarche ne peut pas se faire de manière isolée ou conjoncturelle ; il faut qu'elle soit inscrite dans un schéma institutionnel global et cohérent. Même si j'acceptais que des ajouts ponctuels de caractère parlementaire dans l'architecture institutionnelle communautaire, pourraient conduire, à terme, par le biais de « spill-over effects », à orienter l'ensemble de l'édifice vers une configuration plus fédéralisante, j'avoue que ceci me fait peur. Est-ce qu'en voulant aller dans une direction politiquement inavouable, ne risquerait-on de saper la quelconque légitimité et l'efficacité du système actuel ?

Tous ces flottements sont logiques et attendus. L'Europe se trouve dans un tournant. **Le modèle d'intégration négative qui nécessitait une autorité européenne centrale et indépendante a, manifestement, épuisé ses limites. Une réelle transcendance paraît indispensable, mais elle suscite des inquiétudes venant de plusieurs sources et allant dans plusieurs directions.**

L'accès du Conseil et du Parlement à un niveau égal quant à l'exercice du pouvoir législatif (avec un glissement progressif du premier vers le statut d'une sorte de Sénat européen représentant les Etats), la promotion de la Commission à un vrai pouvoir exécutif, désigné par le corps législatif et politiquement responsable devant lui, la rationalisation de la hiérarchie des normes du droit communautaire, avec des lois-cadres et des règlements d'exécution pris par la Commission ou les Etats membres selon le principe de subsidiarité, l'abandon par la Commission de compétences exécutives techniques au profit des autorités administratives spécialisées et indépendantes à dimension européenne, la simplification qui en découlera pour la fameuse comitologie, avec une suppression progressive des comités de réglementation et de gestion, la fusion des différents piliers en une seule Union politique européenne et la rationalisation de la présentation des traités, avec une partie générale reprenant les dispositions à caractère constitutionnel et une partie spécialisée reprenant les différentes politiques communes et soumise à une procédure de modification

⁹ Ce thème est censé constituer la voie royale pour une parlementarisation/démocratisation plus poussée de l'ensemble du système institutionnel.

allégée, constituent des mesures allant dans la bonne et inévitable direction, qui ne peut être qu'un édifice institutionnel de nature fédérale.

Il va de soi, que dans une telle optique tous auront peur de perdre quelque chose. Et ceci est vrai. Mais, c'est l'unification européenne qui va en gagner, ce qui constitue le seul avenir prévisible pour la survie des peuples de l'Europe, dans un processus d'union toujours plus étroite entre eux et, à terme, dans le but de l'émergence d'un demos européen, *conditio sine qua non* pour l'avènement des Etats Unis de l'Europe.

Je ne sais pas si tout ceci peut trouver assez de place dans le concept du renouvellement de la méthode communautaire. Je crains que non. **Les tensions accumulées doivent se transformer en une nouvelle qualité.** Mais, en même temps, je doute fort qu'il soit possible. Il me semble qu'il n'y a ni la volonté politique, ni la préparation psychologique suffisantes. Si je ne me trompe pas, il faut s'attendre à une survie, de durée indéterminée, du modèle actuel consensuel. Peut-être, l'émergence de la nouvelle qualité a besoin d'une crise salutaire accompagnée d'un sursaut. Une telle crise pourrait être la paralysie des institutions dans une Union mal préparée à 25, 27,28 ou plus que 30 Etats membres.

4. En guise de conclusions.

Essayons maintenant de reprendre le fil de notre argumentation :

- La Commission ne fut jamais et continue à ne pas être un exécutif politique. Ceci n'était pas nécessaire, même pas utile. Le processus de l'intégration négative n'en avait pas besoin. Par contre, il demandait une bureaucratie indépendante, compétente et efficace, qui pourrait accomplir des tâches lourdes, mais essentiellement techniques, bénéficiant –de surcroît- d'un large soutien populaire, comme le démantèlement des obstacles aux échanges et l'harmonisation des législations nationales. Mais, ceci est maintenant quasi accompli. Les rôles, dans un processus d'intégration positive, ne peuvent pas rester les mêmes. Ils doivent changer, mais comment ?

- Si la Commission est le moteur de l'intégration, il n'est pas étonnant que tout le débat sur les changements institutionnels va être structuré autour de son rôle et de sa mission. C'est la raison pour laquelle la Commission se trouve dans l'oeil du cyclone et c'est ça que provoque une crise existentielle dans son sein.

- Si la mission et le rôle de la Commission doivent changer, tout l'équilibre institutionnel en souffrira. La configuration future du triangle institutionnel n'est pas du tout claire. Rien de plus naturel que chacun se replie, dans ces circonstances, en la défense de l'acquis. Mais, une telle situation est, en même

temps, dangereuse, car elle peut aboutir à une lutte corporatiste et sans principes entre les Institutions. J'espérais que la Commission, qui représente l'intérêt commun européen puisse dépasser ce schéma, mais force est de constater que ce n'est pas le cas.

- Il n'est pas non plus surprenant, dans ce contexte, que le renouveau de la méthode communautaire et la nécessité de récadrer les institutions dans leurs compétences nodales, constituent en fait une position défensive tendant à préserver et à étendre le statu quo actuel.

- Il est vrai qu'à traité constant la seule voie concevable d'une relative démocratisation reste la voie procédurale, avec l'extension de la consultation, la participation accrue de la société civile, la meilleure et plus simple régulation, etc. Ce n'est pas par hasard qu'on retrouve tout ça dans le Livre Blanc, encore que dans un état édulcoré, sans aucune force contraignante.¹⁰

- Cependant, il deviendra, à moyen et à long terme, de plus en plus évident que la méthode communautaire ne peut pas faire bon ménage avec un processus soutenu de démocratisation. L'intégration positive nécessite une Commission plus politique, recentrée sur ses compétences d'initiative législative (éventuellement partagée avec d'autres institutions) et de contrôle de l'application du droit. La Commission, très préoccupée par la préservation de son acquis, ne semble pas consciente de cette nouvelle réalité. Elle me donne l'impression de souffrir du syndrome de horror vacui, ce qui la rend hésitante et craintive. C'est dommage.

Si on ramène cette analyse sur le Livre Blanc, il faut le lire pas en tant qu'un effort pour approfondir la légitimité de l'Union, mais comme un guide pratique d'une meilleure implication des citoyens européens, afin de provoquer une certaine européanisation des identités nationales et de contribuer ainsi à la création d'un **espace public européen**. Pour être plus juste, il faut dire qu'il s'agit d'un renforcement aussi de la légitimité par la qualité recherchée du résultat (outcome legitimacy), contrairement à la légitimité apportée par la représentativité des institutions (input legitimacy).

Cette tentative de construction d'une **gouvernance participative**, malgré ses mérites propres, n'est pas suffisante, si elle ne s'accompagne pas par des réformes institutionnelles touchant le gouvernement de l'Europe.

¹⁰ Il est significatif à cet égard que les premiers projets d'application des propositions reprises dans le Livre Blanc sont des codes de conduite que la Commission s'engage unilatéralement de respecter, mais qui ne sont point obligatoires et ne comportent pas des droits dans le chef des particuliers concernés. Au maximum, ces codes de conduite –s'ils ne sont pas suivis– pourraient fonder un recours devant le médiateur pour mauvaise administration. Le contraste avec la pratique américaine est flagrant.

Vu les résistances constatées, il est à attendre que pour une période relativement longue, les institutions européennes seront caractérisées par une mixité de démocratie participative et représentative.

Etant données les difficultés inhérentes au processus d'une fédéralisation européenne, les propositions du Livre Blanc représentent l'introduction dans l'édifice actuel des formules de démocratie directe, au moins jusqu'au moment où on pourra parler de l'existence de démocratie représentative significative au niveau européen.

Vu dans cette perspective, je ne peux pas nier que le Livre Blanc sur la Gouvernance Européenne comporte une certaine avancée pour ne pas dire une avancée certaine.

Bruxelles-Florence, Mars 2002.

Governance in the EU: a European Parliament Perspective*

Wilhelm Lehmann[#]

Introduction

The need to strengthen the democratic legitimacy and the intelligibility of the European project entails that the EU has to work towards legislation and implementation which are better, simpler, more accessible and more responsive to citizens' concerns. As the European Parliament has reiterated many times, this is a *condicio sine qua non* if EU action is to be better understood, better applied and more readily accepted by European citizens. In the past few years, several factors have contributed to a renewed urgency of this agenda:

- In accordance with the strategy formulated at the Lisbon European Council, the EU's increasing economic and social integration and its intention to become more competitive require a clear and effective regulatory framework to protect the interests of the people and of businesses, by enhancing legal certainty and cutting the cost of poor regulatory work.
- With enlargement looming large, there is a need for regulatory arrangements to be made simpler and better if the *acquis* is to be fully applied in an enlarged Europe which wants to preserve its freedom of action.
- During the last decade, European regulation has moved into areas that were previously under the exclusive competence of Member States (such as environmental policy, consumer protection, social, health and work safety rules) and where national rules either did not yet exist or where the European dimension needs to be taken into account to create a level playing field.

The White Paper

The Commission's White Paper on European Governance¹¹ attempts to integrate previous work on transparency and better regulation and to give it a new ambition. It follows a two-pronged approach: firstly, it announces a series of

* This text is a summary of the European Parliament working paper "The New Europe : Governance in a Union of up to 30 Member States", AFCO 101 EN 2 - 2002 (Constitutional Affairs Series). The opinions expressed here and in the working paper are those of the author and do not necessarily reflect the position of the European Parliament.

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¹¹ COM (2001) 428 of 25 July 2001

actions that the Commission will directly embark on, and, secondly, it makes suggestions to the other EU institutions, the national governments and private actors as to their possible contributions to an improvement of European governance. The White Paper is, in other words, both a commitment for future reform within the Commission and an attempt to lead (by giving a positive example and by co-ordination) the Union-wide debate on better governance that will take place in 2002 and feed into the next treaty revision.

According to a recent definition, New Governance as a model and a generalisation of government can be described as a method or mechanism for dealing with a broad range of problems/conflicts in which actors regularly arrive at mutually satisfactory and binding decisions by negotiating and deliberating with each other and co-operating in the implementation of these decisions. It deals mainly with horizontal forms of interaction between actors who have conflicting objectives, but who are sufficiently independent of each other so that neither can impose a solution on the other and yet sufficiently interdependent so that both would lose if no solution were found.¹²

In the EU framework, the Commission's White Paper focuses on sub-treaty issues, but also indicates some issues where treaty revisions appear indispensable, pointing particularly to Art. 133 (representation of the EU in external trade policy) and Art. 202 (comitology).

Broadly speaking, the White Paper addresses three fields of activity:

- Consultation, accessibility and participation
- Better regulation
- Institutional matters, particularly the reform of the Council and the system of delegated legislation (comitology).

As an underlying principle, the Commission stresses the usefulness of the political goals specified in the Treaties and defends the Community method as the essential instrument to implement them. However, the White Paper also publicises new instruments such as co-regulation, contractual arrangements and the open method of co-ordination. The question of democratic legitimacy is mentioned, but not sufficiently elaborated, as the essential prerequisite for compliance.

Consultation and participation

¹² Cf. Philippe C. Schmitter, What is there to legitimise in the European Union... and how might this be accomplished? Contribution to the Jean Monnet Working Paper No.6/01 (Symposium: Mountain or Molehill? A Critical Appraisal of the Commission White Paper on Governance)

Parliamentary procedures are a proven instrument for organising public debate on major political issues. The European Parliament and its committees regularly seek public and expert views through consultation and public hearings. Some Member States systematically consult at a national level on proposals tabled in the Council. Some of the propositions put forward in governance debates on how to better consult “stakeholders” in legislation appear as a duplication of what parliaments are doing.

It should be recognised that the control powers of many parliaments world-wide are dwindling.¹³ The institutional “performance” of a parliament largely depends on the quality of information it receives from the executive. Hence parliaments and governments should agree on high quality standards with respect to the information accompanying government proposals, progress reports on the implementation of laws and impact assessments.

It is believed it would be useful that the Council could expand its recent efforts to improve access to its deliberations, particularly when acting in its legislative capacity and with respect to the European Parliament, and that the Commission should implement the list of actions it has been announcing to the Parliament for quite some time now.

Modern information technology instruments are no panacea: it remains extremely important to provide access to information in a way that empowers citizens and private associations and gives them meta-knowledge on what is going on and where to retrieve salient procedural knowledge as well as facts.

Better regulation

Two essentially different philosophies of social regulation and authority are competing within the governance debate: regulation by formal rule-setting or through authority based on reputation, trust and incentives. Currently there seems to be a general consensus that the first approach is out-dated and authoritarian. Public authorities are, however, obliged to express the general interest. Thus they have a more solid basis than self-regulation, which often comes from economic players or groups whose specific interest may not coincide with the general interest in the long-term.

Binding legislation becomes necessary when equality in the treatment of users has to be achieved through uniform application of identical measures in a certain area. Codes of Conduct and other self-regulation instruments may include mechanisms for imposing sanctions, but in many circumstances only the public authority, using regulation, has stringent enough sanctions to prevent non-

¹³ Cf. OECD Report on Parliamentary Procedures and Relations of 22 January 2001 (PUMA/LEG(2000)2/ REV1)

conformity. Authorities also have to take into account the existing - European and national - legal and constitutional system. Member States have a particular responsibility to ascertain Europe-friendly conduct at all levels of national administration.

Most commentators agree that parliaments should focus on establishing fundamental guidelines for running, controlling and legitimising the many centres of regulatory production (e.g., agencies) in the light of the principles of democratic legality and on controlling the global and final effects of laws and government policies from the citizen's point of view (e.g., through regulatory impact assessment). These objectives should be achieved without erasing the distinctions between the legislative and executive branches.

As far as the practical follow-up to the White Paper is concerned, the European Parliament expressed its intention "to examine carefully as soon as they are submitted to it the numerous individual proposals and measures announced in the White Paper, such as:

- guidelines on collection and use of expert advice,
- priority treatment of possible breaches of Community law,
- criteria for the creation of new regulatory agencies,
- defining minimum standards for consultation and publishing them in a code of conduct,
- developing an approach to working with key networks,
- programme to review and simplify Community legislation adopted before 2000, supported by fast track procedures,
- codifying the current administrative rules concerning the handling of complaints,
- examining how the framework for transnational co-operation of regional or local actors could be better supported at EU level,
- proposing twinning arrangements between national administrations,
- a review of the Union's international representation."¹⁴

Institutional matters and legitimacy

It is highly probable that the policies of the European Union will have to shift increasingly from the distribution of new entitlements and material advantages to stricter regulation and perhaps even stricter control of certain individual

¹⁴ See Parliament's resolution of 29 November 2001, on the Commission White Paper on European governance (minutes of 29/11/2001 - provisional edition PE312.145), reproduced in this volume and based on the report drawn up by Sylvia Kaufmann (doc. A5-0399/2001).

liberties. This makes it necessary to acquire more democratic legitimacy if these "unpopular" policies are to be implemented and enforced. Of the three central EU institutions, the Council appears to have the greatest need to reform its internal structure in this sense. It is imperative to trim down the sectoral logic of the Council's debates in favour of a more deliberative form of decision-making and to strengthen the co-ordinating and leading role of the General Affairs Council. Moreover, a clearer separation of its legislative and external policy activities needs to be established. The internal co-ordination among the Commission's Directorate Generals is also too weak to secure collegiate action.

Many institutional issues are going to be scrutinised by the Convention on the future of Europe and the subsequent Intergovernmental Conference (among them, it is to be hoped, the improvement of democratic legitimacy and new revision methods for certain parts of the future Treaty). Democratic legitimacy depends on certain key forms and procedures (such as "One man - one vote") which are unalienable and cannot be replaced by focus panels or other recent propositions. The creation of a truly European public debate on political issues is difficult but nevertheless a necessary condition for increasing the credibility of the European institutions and citizens' interest in decisions on the European level. This would be much helped by modified electoral procedures to the European Parliament and a better profile of European political parties.

A few suggestions

Some ideas and principles aimed at improving European governance may be extracted from the White Paper as well as from the relevant literature:

- European governance has to strike a balance of negotiation between States, expression of the will of the people, and the operation of strong and lasting institutions. Member States need to give higher priority to the incorporation and enforcement of European legislation.
- Governance arrangements never work alone but only in connection with community norms, state authority and market competition. Market forces must be coupled with advanced regulatory systems, a sophisticated legal architecture, and a culture supportive of the rule of law.
- Legitimacy in a modern polity is based on a balance of technical expertise and majority-based representativity.
- New regulatory processes such as co-regulation carry the risk of lacking peer group pressure, cartel building and sloppy self-regulation. The respect of legal and ethical norms by contracting parties should hence be under close control through public agencies.

- New approaches to participatory and deliberative democracy must recognise the principles and structural elements of representative democracy. Political leaders should communicate and participate in dialogue across local, regional, national and supranational levels. Members of national parliaments have a particular responsibility in this respect.
- Key events should be programmed with a view to reducing the number of subjects and of occasions for debate and to helping the public to understand the process of political opposition and compromise on the European level.
- Council meetings of a legislative nature should be opened to MEPs with a particular interest in the matters dealt with.
- The decisions taken by comitology committees and the material used for their preparation should be made easier to access, not only for the European Parliament but also for other stake-holders with a legitimate interest.
- An appropriate symmetry has to be established between exhaustive examination of legislative detail and political control of the internal procedures and leading personalities of executive and regulatory offices and agencies.
- All ongoing consultations with experts and the organised civil society concerning the preparation of legislative acts should be listed by the Commission in a well structured and regularly updated public register that is easily accessible *via* the Internet. The contents of expert advice given to the Commission should be published completely - and their authors specified. Connected information, such as the mandate given at the outset, should also be made available.

Deutsche Stellungnahme zum Weißbuch der Europäischen Kommission "Europäisches Regieren"

12. Dezember 2001

Vorbemerkung:

Die Bundesrepublik Deutschland begrüßt die Vorlage des Weißbuchs "Europäisches Regieren" durch die Europäische Kommission. Das Weißbuch greift für die Zukunft Europas relevante Fragen und Themen auf. Es leistet damit einen wichtigen Beitrag zur Reformdebatte. Deutschland teilt die grundlegende Intention der Europäischen Kommission, durch das Weißbuch sowohl mehr Transparenz und Bürgernähe als auch höhere Effektivität und Kohärenz bei der Umsetzung von Vorhaben der Union zu erreichen.

Das Weißbuch formuliert zu Recht hohe Ansprüche der Kommission an sich selbst, auf deren Einhaltung Deutschland achten wird. Bei den entsprechenden – insbesondere auch internen – Reformbemühungen wird Deutschland die Kommission nachhaltig unterstützen.

Bund und Länder sind allerdings davon überzeugt, dass Maßnahmen für eine bessere Verwaltungszusammenarbeit zwischen der EU und den Mitgliedstaaten nicht ausreichen, um das Vertrauen in die europäischen Institutionen wieder zu stärken. Erforderlich ist darüber hinaus eine dem Subsidiaritätsprinzip entsprechende bessere Abgrenzung der Zuständigkeiten, die gemäß dem Auftrag des Europäischen Rates von Nizza neben weiteren Fragen Gegenstand der Beratungen des Konvents zur Vorbereitung der nächsten Regierungskonferenz sein wird.

Es ist daher zu begrüßen, dass das Weißbuch die Frage, wie die Arbeitsweise der Kommission verbessert werden kann, weitgehend von den grundlegenden Themen des Post-Nizza-Prozesses unterscheidet, die auf eine Änderung des europäischen Vertragsrechtes abzielen.

Die Umsetzung einzelner Vorschläge des Weißbuches sollte auf Maßnahmen im Rahmen der geltenden Verträge beschränkt werden.

Zu den Vorschlägen des Weißbuchs für einen Wandel

1. Bessere Einbindung aller Akteure

- (1) Eine bessere Information der Bürger über die europäischen Institutionen und Entscheidungsprozesse, die Ziele und Maßnahmen europäischer Politik und deren Erfolge ist Grundvoraussetzung einer besseren Einbindung in den europäischen politischen Willensbildungsprozess. Informationsvermittlung über europäische Politik ist eine vorrangige Aufgabe der EU-Institutionen, insbesondere der Kommission und des Europäischen Parlaments. Die Bundesrepublik Deutschland ist sowohl auf Bundes- als auch auf Landesebene bereit, die europäischen Institutionen dabei im Rahmen einer konstruktiven und partnerschaftlichen Zusammenarbeit zu unterstützen. Die Zusammenarbeit bei der Organisation und Durchführung von Informationsmaßnahmen kann jedoch nur unter Berücksichtigung des jeweiligen politischen, wirtschaftlichen und kulturellen Kontextes erfolgreich sein.
- (2) Die Sicherstellung einer Gesamtkohärenz der Gemeinschaftspolitiken ist zu begrüßen. Dies rechtfertigt allerdings in keiner Weise die Entwicklung einer Raumordnungspolitik auf Gemeinschaftsebene, wie sie im Weißbuch angesprochen wird. Diese Aufgabe obliegt den Mitgliedstaaten und Regionen und kann von diesen besser wahrgenommen werden. Insofern ist nicht ersichtlich, zu welchem Zweck Indikatoren entwickelt werden sollen.
- (3) Die von der Kommission als „Zivilgesellschaft“ bezeichneten Sozialpartner, NROs und informellen Gruppen nehmen im Rahmen der Artikulation von Interessen von Bürgern und Betroffenen auch gegenüber den europäischen Institutionen eine wichtige Rolle wahr. Ihre Einbeziehung in den gemeinschaftlichen Entscheidungsprozess begründet jedoch keine eigenständige oder ergänzende demokratische Legitimation. Die Konsultation der "Zivilgesellschaft" im Vorfeld von Entscheidungen kann zwar Transparenz und Effektivität des EU-Handelns verbessern; ihrer Einbeziehung in Entscheidungen oder der Übernahme von Verantwortung im Umsetzungsprozess steht jedoch entgegen, dass die Vertreter dieser Interessenvereinigungen weder über ein demokratisches Wahlmandat verfügen noch parlamentarisch kontrolliert werden, während das Gesamtinteresse durch die Parlamente vertreten wird.. In jedem Fall sollten einheitliche Verfahrensnormen Transparenz und Effizienz der Anhörungen sichern (strukturierter Konsultationsprozess). Die Einrichtung einer Dialog-Struktur im Bereich der Durchführung und Evaluierung von EU-Programmen erscheint sinnvoll. Für eine abschließende Beurteilung dieses Teils des Weißbuches wird es entscheidend darauf ankommen, welche Vorschläge die Kommission für

die von ihr geplanten Normen und Partnerschaftsabkommen und für die Einbindung von Netzwerken macht. Darüber hinaus wird angeregt zu prüfen, wie Kommission, Rat und Parlament gemeinsam von der Konsultation der Zivilgesellschaft profitieren können. Bei der Beurteilung von Stellungnahmen im Rahmen der Konsultationen muss weiterhin berücksichtigt werden, dass die Organisationen der Zivilgesellschaft Einzelinteressen vertreten. Das Europäische Parlament, der Rat und die Europäische Kommission hingegen sind direkt oder indirekt demokratisch legitimiert. Ihnen allein obliegt es daher, Entscheidungen auf der Grundlage der europäischen Zuständigkeitsordnung zu treffen.

- (4) Zwischen der Zivilgesellschaft einerseits und den Regionen und Kommunen andererseits ist klar zu unterscheiden. Regionen und Kommunen sind dem Gemeinwohl verpflichtet. Deren Vertreter verfügen über ein politisches Mandat und sind demokratisch legitimiert. Ihre Konsultation kann deshalb auch nicht durch eine Anhörung von Verbänden und Organisationen der Zivilgesellschaft ersetzt werden.
- (5) Regionen mit Gesetzgebungsbefugnissen nehmen in Europa eine besondere Stellung ein. Es ist bedauerlich, daß das Weißbuch sie nicht erwähnt. Wenn in einem Sachbereich in einzelnen Mitgliedstaaten die Zuständigkeit bei den Regionen liegt, sollte mit diesen ein besonderer Konsultationsprozess bei der Erarbeitung von Vorschlägen der Kommission entwickelt werden.
- (6) Es bestehen erhebliche Bedenken hinsichtlich des Vorschlags der Kommission, sog. zielorientierte dreiseitige Verwaltungsvereinbarungen einzuführen. Diese würden zwangsläufig dazu führen, dass die Kommission den Vollzug von Rechtsakten durch die subnationalen Einheiten unmittelbar beeinflusst und damit einen unzulässigen Eingriff in die Vollzugskompetenz der Mitgliedstaaten darstellen.
- (7) Die Vorschläge zum Ausschuss der Regionen werden grundsätzlich begrüßt. Kommission, Parlament und Rat sollten den Ausschuss der Regionen jedoch stärker als bisher als politischen Partner wahrnehmen. Die Kommission sollte daher Maßnahmen vorschlagen, in welcher Weise künftig Initiativen und Vorschläge des Ausschusses der Regionen eingehender geprüft bzw. aufgegriffen werden können.
- (8) Die Förderung des Personalaustausches zwischen den Mitgliedstaaten und den EU-Institutionen entspricht einem Wunsch von Bund und Ländern. Wie die Mitgliedstaaten ist auch die Kommission aufgefordert, den Beamten durch ihre Entsendung den Erfahrungsaustausch vor Ort zu ermöglichen und sie insbesondere mit den spezifischen nationalen, regionalen und lokalen Problemen beim Vollzug des EU-Rechts vertraut zu machen. Das Verständnis zwischen den Akteuren der verschiedenen Ebenen kann hierdurch erheblich verbessert werden.

2. Eine bessere Politik, bessere Regeln und bessere Ergebnisse

- (9) Die Bundesrepublik Deutschland teilt die Intention der Kommission hinsichtlich einer Überprüfung und Vereinfachung des bestehenden Rechts.
- (10) Die Bundesrepublik Deutschland begrüßt die im Weißbuch enthaltenen Vorschläge zur Einhaltung des Subsidiaritäts- und Verhältnismäßigkeitsprinzips. Vor der Ausarbeitung von Vorschlägen muss geprüft werden, ob die EU nach den Vertragsbestimmungen tatsächlich handlungsbefugt ist, ob Regelungsbedarf auf europäischer Ebene besteht und ob Kosten und Nutzen einer Maßnahme ein Vorgehen rechtfertigen.
- (11) Es entspricht der von Bund und Ländern aufgestellten Forderung und dem von der Kommission gesetzten Ziel einer geringen Detailliertheit und Komplexität von EU-Regelungen, wenn sich Richtlinien auf die verbindliche Festschreibung des jeweiligen Ziels beschränken und die Wahl der Form und der Mittel den innerstaatlichen Stellen überlassen. Die Bundesrepublik Deutschland unterstützt daher auch das Vorhaben der Kommission, unter sonst gleichen Gegebenheiten eine Richtlinie einer Verordnung und eine Rahmenrichtlinie einer detaillierteren Maßnahme vorzuziehen. Das Ziel, das Gemeinschaftsrecht zu vereinfachen und die Regelungsdichte möglichst zurückzuführen, sollte auch für die Durchführungsvorschriften der Kommission gelten.
- (12) Die Anwendung der Methode der Ko-Regulierung wird befürwortet, soweit technische Standards entwickelt werden sollen, deren Notwendigkeit von den Betroffenen anerkannt wird und diese daher bereit und in der Lage sind, ihre praktischen Erfahrungen im erforderlichen Umfang einzubringen. Die Methode darf nicht auf Bereiche erstreckt werden, in denen aufgrund der zu beachtenden Interessen eine gesetzgeberische Lösung erforderlich ist. Eine ausreichende demokratische Kontrolle muss gesichert sein. Da die Vorstellungen der Kommission hier noch vage sind erfolgt eine weitere Bewertung bei Vorliegen konkreter Vorschläge.
- (13) Im Hinblick auf die „Methode der offenen Koordinierung“ bekräftigt die Bundesrepublik Deutschland ihre Haltung, dass diese außerhalb der vertraglichen Zuständigkeiten der EU-Organe nur dem Informations- und Erfahrungsaustausch zwischen den Mitgliedstaaten dienen darf und keine Erweiterung der Handlungsbefugnisse der Union begründet. Eine Abstimmung zwischen den Mitgliedstaaten bleibt dadurch unberührt.
- (14) Die Bundesrepublik Deutschland erkennt an, dass der Austausch von Erfahrungen und Informationen geeignet ist, Beispiele für erfolgreiche Ansätze in den Mitgliedstaaten zu verbreiten.
- (15) Die Kommission wird in ihrem Vorhaben unterstützt, Regelungsinitiativen zurückzuziehen, wenn sich aufgrund der Komplexität des verhandelten

Vorschlag ein Verstoß gegen das Subsidiaritäts- und Verhältnismäßigkeitsprinzip abzeichnet. Der Ablauf eines solchen Verfahrens bedarf noch einer Erläuterung durch die Kommission.

- (16) Zu begrüßen ist auch die Initiative der Kommission für ein Programm zur Vereinfachung des EU-Rechts. Insbesondere sollte mehr Flexibilität für Mitgliedstaaten und Regionen bei Programmen mit territorialen Auswirkungen geschaffen werden. Dies gilt u.a. im Bereich der Regionalpolitik.
- (17) Die Einrichtung weiterer Europäischer Agenturen mit Entscheidungsbefugnissen begegnet Bedenken unter den Gesichtspunkten der demokratischen Kontrolle und der Transparenz. Der Vertrag gibt der EU nur in wenigen Bereichen, in denen eine weitgehend einheitliche Umsetzung nur durch eine gemeinschaftliche Verwaltung effektiv erscheint, eigene Verwaltungskompetenzen. Die Annex-Verwaltungskompetenz der Kommission bei der Rechtsangleichung muss nach der EuGH-Rechtsprechung auf eng begrenzte Ausnahmefälle beschränkt werden. In anderen Bereichen darf die EU-Ebene grundsätzlich keine Verwaltungsaufgaben wahrnehmen, weder durch die Kommission, noch durch europäische Agenturen. Eine „Auslagerung“ in Agenturen darf daher nur dort erfolgen, wo es um rein technische Entscheidungen ohne politische Dimension (wie bei der Durchführung von Förderprogrammen), wissenschaftliche Unterstützung (s. die Europäische Umweltagentur) oder rechtlich sehr detailliert geregelte, fachlich besonders gelagerte Sachbereiche geht (s. die Arzneimittelbehörde).
- (18) Die Einrichtung von Koordinierungsstellen für die Umsetzung des Gemeinschaftsrechts ist in Deutschland bereits verwirklicht.
- (19) Für den Vollzug des Gemeinschaftsrechts sind die innerstaatlichen Verfassungsordnungen zu beachten. In Deutschland sind innerstaatlich in der Regel die Länder für den Gesetzesvollzug zuständig.

3. „Der Beitrag der EU zur Global Governance“

- (20) Die Aufgaben der Union sind nicht nur nach innen gerichtet. Die Union wird über ihre Grenzen hinaus auf Grundlage der Verträge zu Frieden, Wachstum, Beschäftigung und sozialer Gerechtigkeit beitragen. Konkrete Vorschläge müssen im Hinblick auf diese Zielsetzung dann im Einzelnen geprüft werden."

4. Neuausrichtung der Politikfelder und der Institutionen

- (21) Die in diesem Abschnitt enthaltenen Vorschläge setzen teilweise Vertragsänderungen voraus, beispielsweise hinsichtlich der Erweiterung der Mit-

scheidungsbefugnis des Europäischen Parlaments. Aus Sicht der Bundesrepublik Deutschland sollte sich das Weissbuch auf Vorschläge beschränken, für deren Umsetzung keine Vertragsänderung erforderlich ist.

(22)Die im Weißbuch enthaltenen Passagen zum Komitologie-Verfahren bedürfen weiterer Klärung.

Germany's opinion on the European Commission's White Paper on "European Governance"

12 December 2001

Foreword:

The Federal Republic of Germany welcomes the White Paper on European Governance presented by the European Commission - a document that looks at questions and issues which are relevant to Europe's future and thus makes an important contribution to the debate on reform. Germany endorses the basic aim of the White Paper, which is to make the Union more transparent and bring it closer to its citizens and to implement its projects more effectively and coherently.

In the White Paper, the Commission rightly sets high standards for itself and Germany will see to it that it meets them, whilst lending its unstinting support to the Commission in its efforts to make the necessary reforms, particularly internally.

The *Bund* and the *Länder* are, however, convinced that streamlining administrative cooperation between the EU and the Member States will not be enough to renew and strengthen confidence in the European institutions. For this to happen, the line between EU and national competence also needs to be drawn more sharply in keeping with the principle of subsidiarity. This is one of the issues that the Convention briefed by the European Council of Nice to prepare for the next Intergovernmental Conference will deliberate on.

We are therefore pleased to see that the White Paper largely divorces the question as to how the Commission can streamline its operations from the fundamental issues of the post-Nice process which are geared to amending the European Treaties.

Implementation of individual proposals in the White Paper should be confined to action within the purview of the existing Treaties.

On the White Paper's reform proposals

1 Better involvement

(1) Before Europeans can be involved more closely in the political opinion-forming process, they need to be better informed about the European institutions and decision-making procedures and European policy aims, instruments and achievements. Disseminating information on European policy is one of the top priorities of the EU institutions, especially the Commission and the European

Parliament. The Federal Republic of Germany is willing to enter into a constructive partnership with the European institutions to help them do this at both *Bund* and *Länder* level. Cooperation in organising and implementing information activities can, however, only be successful if the relevant political, economic and cultural context is taken into account.

(2) We welcome the aim of ensuring overall consistency in Community policies. However, this in no way justifies a regional development policy at Community level as is proposed in the

White Paper. This is a task for the Member States and the regions and one that they are better equipped to handle. We therefore fail to see why indicators should be developed.

(3) The social partners, NGOs and informal groups which the Commission calls “civil society” play an important part in voicing the concerns of citizens and interested parties, also vis-à-vis the European institutions. However, the fact that they are involved in Community decision-making processes does not give them any independent or supplementary democratic legitimacy. Consulting “civil society” prior to making decisions can make EU action more transparent and effective, but the fact that such interest groups' representatives have no democratic electoral mandate and are not subject to parliamentary supervision - the public interest being represented by the Parliaments - argues against them being involved in decisions or given responsibility for implementation.

Procedural standards should definitely be introduced to ensure that the consultation process is transparent and efficient. Setting up a dialogue structure for implementing and evaluating EU programmes would appear to be a sensible move. Before this part of the White Paper can be assessed finally, it will be crucial to see what proposals the Commission makes for the standards and partnership agreements it plans and for the involvement of networks. We would also suggest that the Commission examines how the Commission, Council and Parliament can benefit jointly from consulting civil society. In assessing opinions in the course of the consultation process, it must also be borne in mind that the organisations of civil society represent individual interests. The European Parliament, the Council and the European Commission, however, possess direct or indirect democratic legitimacy. It is therefore up to them to make decisions where the powers conferred upon them by the Treaties entitle them do so.

(4) A clear distinction should be made between civil society on the one hand and the regions and municipalities on the other. The regions and municipalities have obligations to the public good. Their representatives hold a political mandate and are democratically elected. Consultations with them can therefore not be replaced by listening to the views of associations and organisations of civil society.

(5) Regions with powers to enact legislation have a special role in Europe. It is regrettable that the White Paper does not mention them. If responsibility for a given area lies with the regions in some Member States, a special consultation process should be developed when the Commission is preparing proposals on it.

(6) We have considerable reservations about the Commission's proposal to introduce target-based tripartite administration contracts. These would inevitably lead to a situation where the Commission has a direct say in the execution of legislation by a subnational authority, which would constitute an unacceptable encroachment on the Member States' executive powers.

(7) The proposals on the Committee of Regions are welcomed in principle. The Commission, Parliament and Council should, however, see the Committee of Regions as more of a political partner than they have in the past and the Commission should hence propose ways in which initiatives and proposals put forward by the Committee can be looked at more closely or taken up in the future.

(8) The call for exchanges of personnel between the Member States and the EU institutions is in keeping with a request made by the *Bund* and *Länder*. Like the Member States, the Commission is called upon to second officials so as to give them the opportunity to exchange experience in the field and, in particular, to familiarise themselves with the specific national, regional and local problems involved in implementing EU legislation. This would considerably improve understanding between the players at the various levels.

2. Better policies, regulation and delivery

(9) The Federal Republic of Germany endorses the Commission's intention to review and simplify existing legislation.

(10) The Federal Republic of Germany welcomes the proposals contained in the White Paper to comply with the principles of subsidiarity and proportionality. Before the EU prepares any proposals it must determine whether it is actually authorised to take action under the provisions of the Treaty, whether there is any need for regulation at European level and whether the cost-benefit analysis of a given measure justifies action being taken.

(11) It is in keeping with both the demands made by the *Bund* and *Länder* and the aim the Commission had set itself to reduce the detail and complexity of EU provisions for directives to be confined to a binding commitment to the aim in question and for the ways and means of achieving it to be left to the national authorities. The Federal Republic of Germany therefore also supports the Commission's plan to opt for a directive rather than a regulation and a framework directive rather than a more detailed instrument, all other things being equal. The aim of simplifying Community law and reducing the density of regulation should also apply to the Commission's implementing provisions.

(12) The Federal Republic of Germany supports co-regulation for drafting technical standards where the parties concerned acknowledge the need for them and are willing and able to input their practical experience to the extent necessary. The method should not be extended to areas in which the interests to be protected require legislation. Proper democratic control must be ensured. Since the Commission's ideas here are still vague, a further appraisal will be made once concrete proposals have been put forward.

(13) With regard to the "open method of coordination", the Federal Republic of Germany reiterates its view that, in areas outwith those in which the Treaties entitle EU bodies to take action, this should only serve to exchange information and experience between Member States and does not justify any increase in the Union's executive powers. This has no bearing on coordination between the Member States.

(14) The Federal Republic of Germany acknowledges that exchanging experience and information is a suitable means of disseminating examples of good practice in the Member States.

(15) The Commission is supported in its plans to withdraw proposals for legislation if, as a result of the complexity of the proposal which is being negotiated upon, it becomes clear that it might breach the principles of subsidiarity and proportionality. The Commission needs to explain how such a procedure would work.

(16) The Commission's idea for a programme to simplify EU legislation is also to be welcomed. This needs, in particular, to afford more flexibility for Member States and regions in programmes with territorial repercussions. This applies *inter alia* in the area of regional policy.

(17) From the point of view of democratic control and transparency, the Federal Republic of Germany has reservations about more European agencies with decision-making powers being set up. The Treaty confers independent powers of administration upon the EU in only a few areas in which Community administration is seen as the only effective means of widely standardising implementation. The Commission's additional administrative powers to harmonise legislation must, as the European Court of Justice's rulings confirm, be confined to very few exceptions. In other areas, the EU may, as a rule, not assume any administrative tasks, neither through the Commission nor through European agencies. Powers may be granted to an agency only in instances where purely technical decisions without any political ramifications (such as implementing support programmes), scientific support (cf. European Environment Agency) or highly specialised technical areas covered by very detailed legal provisions (cf. European Agency for the Evaluation of Medicinal Products) are concerned.

(18) Coordination points for implementing Community law have already been set up in Germany.

National constitutional provisions are to be complied with when Community law is implemented. In Germany it is generally the *Länder* which are responsible for this.

3. The EU's contribution to global governance

(20) Not all the Union's areas of responsibility lie within its borders. Under the Treaty, it has to contribute to peace, growth, employment and social justice outside them. Any concrete proposals must be examined individually in the light of these aims.

4. Refocused policies and institutions

(21) Some of the proposals contained in this section require amendments to the Treaties, such as extending the European Parliament's co-decision powers. The Federal Republic of Germany takes the view that the White Paper should confine itself to proposals which do not require any amendment to the Treaties.

(22) The passages on the procedures for the exercise of the Commission's implementing powers in the White Paper require further clarification.

Florence EUI Speech by Nora Radcliffe MSP, member of the Scottish Parliaments European Committee.

- Can I begin by thanking Professor Joerges and his colleagues for organising this event? It is a unique opportunity to share ideas
- I am a Member of the Scottish Parliament and in particular both a Member of the Parliament's European Committee and party spokesperson on Europe for the Liberal Democrats, the centrist party, within the Parliament
- Let me go back in time now to the spring of 2001. At that time, the European Committee recognised that the publication of the Commission's White Paper on Governance offered a unique opportunity to initiate a debate in Scotland on our role in the EU and how our young Parliament could contribute to the future of Europe -and develop links with similar regions throughout the rest of the continent
- We chose to launch a major inquiry into this subject and to seek the views of many across Scotland and the rest of the EU on how Europe should be reformed. The Committee's inquiry and report took just under one year to compile. We heard evidence not only from civic Scotland, but from MEPs from Scotland and beyond, from the Committee of the Regions, from Westminster Members of Parliament, from the Scottish Executive, or government in Scotland, and from the UK's Minister for Europe, Peter Hain MP _ in doing so, incidentally, this was the first time a UK Minister appeared before a Scottish parliamentary Committee, an indication, hopefully of the seriousness the UK Government is treating this issue
- Bearing in mind the different political groups within my Committee, the final report, I am pleased to tell you, was agreed unanimously by its membership, across all the parties. Consensus building is a very important principle for our parliament.
- I think it was important we undertook this opportunity to contribute to what is a ground breaking debate
- Why? Because, sadly, it is evident that both in Scotland _ the rest of the UK - knowledge and understanding of the work of the EU is poor. In fact, recent surveys show the UK to be the least well-informed of all the countries of the EU on how Europe works. We tend to feel the EU is something distinct and different from us, when in fact we are actually a component part of the EU. Our Ministers attend Council meetings, we have Scottish MEPs and indeed Scots are European citizens.
- As a simple example, people in the UK often talk about travelling "to" Europe as opposed to travelling within the continent. Europe is seen as being "over there" or foreign.

- European news and politics is given limited coverage and sadly the main Scottish newspapers no longer have any Brussels based correspondents – and when EU matters are covered, reporting is invariably hostile.
- We often appear to be the first to complain, rightly or wrongly, about supposed interference in our lives by the EU institutions; from serious issues such as restrictions on livestock trade due to BSE to frankly ridiculous myths about the curvature of bananas.
- However, any antipathy towards the EU that exists is reflected not in outright hostility but by downright apathy. Turnout at European Parliamentary elections is alarmingly small – just under 25% of the electorate in Scotland bothered to vote in the 1999 European Parliament elections – whilst ignorance of what the EU does, how it works – and importantly what positive things it can offer the people, is depressingly high.
- Yet, whilst the European Union as a whole, is physically located over the sea from us with its main institutions in Belgium and in France, a close inspection shows it is not an entity over which we have no control.
- With this in mind, the Committee recognised that we cannot blame the EU for doing things whilst not at the same time blaming ourselves. In short, to paraphrase the quote, "l'Etat, c'est moi", the EU, that's us, - we have nobody to blame but ourselves.
- That is why we welcomed the Commissions White Paper and why we agreed that it is vital that we in Scotland engage with the reforming of the EU that takes place between now and the intergovernmental conference in 2004. These reforms will take forward much of the unspoken business that was left from the Nice summit. As some observers have said, much was left unresolved at Nice and it is vital that it is fixed now, and as we said in our report, it is time to grasp the opportunity and take the necessary decisions to open up and make more effective, Europe's decision making process
- The Scottish Parliament also offers the EU one unique perspective as it considers improving its Governance to enable it to open itself up to its citizens.
- As a very modern Parliament, born in 1999 or should that be reborn, the Scottish Parliament is ideal example of effective governance for the 21st century. We are very modern in our thinking, our procedures and our working practices.
- However, we had one huge advantage when being designed. We started with a blank canvas to paint upon. Although – obviously – we were born out of the UK Parliament in Westminster, there was never any intention in the Scottish Parliament simply being a carbon-copy of Westminster which relies heavily on obscure, archaic practices and traditions that can make for great theatre but are incomprehensible at times to the people

- Instead, prior to the Scottish Parliament's birth, we had our own version of a "Convention". Civic Scotland _ and by that I include politicians, academics, the media, employers, trades unions, churches but most importantly the people, the ordinary citizens, of Scotland, formed the Consultative Steering Group _ which drew up the framework model of how our new Parliament should function.
- Now, unfortunately the European Union does not have a blank canvas. The EU has been evolving since the 1950s and is an intricate mix of institutions, treaties, languages, constitutions and fifteen different parliamentary traditions - this makes for a highly complex system.
- Regardless, we believe that the founding principles of the Scottish Parliament - of being transparent, accountable and open to the people are something the EU should aim for if it truly wishes to engage with its citizens
- The first of these principles is the need for greater transparency. From the evidence we gathered, it is almost universally accepted that the EU institutions, particularly the European Council and Council of Ministers, currently pay minimal attention to this. Even the UK Minister for Europe called for greater transparency during decision taking within its meetings.
- Indeed as the Minister told us, "The Council of Ministers is the only legislative body _ with the possible exception of the one in North Korea _ that is not fully transparent"
- How on earth can we expect politicians, interest groups and our citizens at large to have any interest at all in the machinations of EU decision-making if it is all done behind closed doors? Reform of the European Council and its various formations is a critical part of the process.
- For example, it is important, we believe, the Council of the EU meets in public when in its legislative role.
- Why is this principle so important? Because it opens up the system of the scrutiny to all, not least of which all our national and regional parliaments.
- We firmly believe that part of the core of the problem with the EU is there is little or no effective scrutiny in all of our own national parliaments and legislative assemblies of EU business. In this sense, we endorse the views of the recent report by the Italian MEP, Mr Napolitano, on the role of national parliaments and parliaments in general.
- However after very careful consideration, and despite Prime Minister Blair's Warsaw speech where he saw the time for one had come, we concluded that the solution to ineffective scrutiny in the EU is not to create a new Brussels based institution, a so-called second or third chamber
- We believe its is much better scrutiny by the decision makers in all legislatures at both national and regional levels throughout the EU.

- Our citizens do not I'm sure, often take the time to scroll through the websites of the EU to find out, what our national Ministers say, do and agreed to, when they go to Brussels, or what the unelected European civil service in the form of the Commission is proposing in terms of new legislation as stakeholders in explaining how the EU affects our lives.
- However, the public and the press **do** pay attention to what's happening in our own Parliaments, assemblies and state legislatures. If we can repatriate from the EU not elements of our shared sovereignty as some may wish, but the transparency of our systems and the control over our executives, we will have gone a long way to addressing Europe's democratic deficit.
- We feel a number of basic reforms to the existing EU practices and structures are required such as the simplification and rationalisation of the treaties _ even experts can struggle with these at times - Although we do accept that this can not be done to the extent that it alters the division of powers for any of the institutions
- We concluded there should be a more open Commission in terms of its work programme _ we certainly are happy to endorse the protocol they reached with the Committee of the Regions where the Presidents will meet to discuss priorities. But can this protocol be developed even further to engage even more groups or Europe's citizens?
- We fully endorsed the view that it is not necessary, and indeed may prove impossible, to define exactly to the tiniest degree who does what at the EU, national and local level. This may be where we differ from other colleagues across the EU and even those I am sharing a platform with [*NB. Germans seem to favour going down this route*]
- It is much better, we believe, to have a broadly flexible approach based on broad competences and then have a clear and effective system, perhaps through the legal avenue of the Court of Justice, if Member States or regions with legislative powers feel their prerogatives have been infringed upon by the EU institutions.
- In this respect we were quite drawn to Alain Lamassoure MEP _ who appeared before the Committee in Edinburgh _ of the idea of nations/regions such as Scotland being awarded "partners of the Union" status.
- This recognised the current set-up in terms of Member States as the building block of the EU, whilst giving areas like Scotland a greater say and greater access to the Commission, the Council and the Courts in terms of implementation of EC legislation.
- We feel such a new relationship with the Commission, with preferential access at a pre-legislative phase, is very important and very much in line with the Commission's own Governance White Paper.

- We believe that we should now move on from endless arguments looking for the perfect definition of subsidiarity.
- Instead, we concluded that we should now all be looking at developing more transparent principles on the involvement and what the roles and rights of the legislative regions should be in relation to the full member state.
- The Committee believed that the 2004 IGC should seriously consider setting up a control panel to enforce subsidiarity. If that is agreed, it is one of the reasons we believe states or regions such as Scotland should have access to the European Courts.
- Another reason for that is that, although, technically, all EU matters in the UK are the responsibility of the Westminster Parliament, a key reason why the Scottish Parliament European Committee exists is because the onus on the correct implementation of Community law lies with the Scottish Executive in Edinburgh. In short, we have this power but no right of direct access to the Commission or the Court.
- In other words, if the Executive (Scottish government) fails to implement Community law correctly any fines imposed will fall upon them...and ultimately the Scottish people
- My Committee is charged with overseeing the work of the Scottish Executive to see they don't find themselves heading on such a path
- For that reason we believe it is essential that the IGC takes measures to allow states such as Scotland privileged or at least semi-privileged access to the European courts. It seems inequitable not having any right of access to the European Court of Justice if your competencies and policies have been questioned by the EU
- Finally, my Committee published a report last year on the EU Charter of Fundamental Rights.
- There is a perception, certainly in the UK, that adopting this charter is a step towards a EU constitution. We do not feel this is the case.
- This is perhaps not a forum to look at a European constitution
- Regardless, we accepted the view that Charter should not override national constitutions where they exist, but that it provides each EU citizen with an ability to hold the EU institutions to account in terms of their rights
- We believe that the Charter should be made both legally binding and justiciable
- Let me conclude by thanking the organisers, my fellow speakers and indeed you the audience for inviting me here and for listening to what I had to say. I am happy to take questions of course as I believe that is part of having an open, transparent and inclusive discussion on Europe's future, and those

three principles – openness, transparency and inclusiveness – if adopted by the EU as the core of any reform, would I believe go a very long way to solving Europe’s democratic deficit.

- Grazie and thank you.

ANNEX I
EUROPEAN GOVERNANCE:
A WHITE PAPER

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.7.2001

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EXECUTIVE SUMMARY

Today, political leaders throughout Europe are facing a real paradox. On the one hand, Europeans want them to find solutions to the major problems confronting our societies. On the other hand, people increasingly distrust institutions and politics or are simply not interested in them.

The problem is acknowledged by national parliaments and governments alike. It is particularly acute at the level of the European Union. Many people are losing confidence in a poorly understood and complex system to deliver the policies that they want. The Union is often seen as remote and at the same time too intrusive.

The Irish "no" highlights the impact of these problems on many people. This was reflected not only in the final outcome of the referendum, but also in the low turnout and quality of the debate which preceded it.

Yet people also expect the Union to take the lead in seizing the opportunities of globalisation for economic and human development, and in responding to environmental challenges, unemployment, concerns over food safety, crime and regional conflicts. They expect the Union to act as visibly as national governments.

Democratic institutions and the representatives of the people, at both national and European levels, can and must try to connect Europe with its citizens. This is the starting condition for more effective and relevant policies.

The Commission identified the reform of European governance as one of its four strategic objectives in early 2000. Political developments since then have highlighted that the Union faces a double challenge: there is not only a need for urgent action to adapt governance under the existing treaties, but also for a broader debate on the future of Europe in view of the next Inter-Governmental Conference.

Already within the existing Treaties the Union must start adapting its institutions and establishing more coherence in its policies so that it is easier to see what it does and what it stands for. A more coherent Union will be stronger at home and a better leader in the world. It will be well placed to tackle the challenge of enlargement.

The White Paper on European Governance concerns the way in which the Union uses the powers given by its citizens. Reform must be started now, so that people see changes well before further modification of the EU Treaties.

The White Paper proposes opening up the policy-making process to get more people and organisations involved in shaping and delivering EU policy. It promotes greater openness, accountability and responsibility for all those involved. This should help people to see how Member States, by acting together within the Union, are able to tackle their concerns more effectively.

The Commission cannot make these changes on its own, nor should this White Paper be seen as a magic cure for everything. Introducing change requires effort from all the other Institutions, central government, regions, cities, and civil society in the current

and future Member States. The White Paper is primarily addressed to them. It proposes a series of initial actions. Some of these should help the Commission to concentrate its action on clear priorities within the tasks conferred on it by the Treaty: right of initiative, execution of policy, guardian of the Treaty and international representation. These will be taken forward immediately. The paper also launches a consultative process which will run until the end of March 2002 on the need for action by the other Institutions and Member States.

By the end of 2002, the Commission will report on the progress it has made and draw lessons from the White Paper consultation. This should establish a basis for taking the governance agenda forward with the other Institutions.

The Commission will also actively participate in the preparation of the forthcoming European Council in Laeken, presenting its views on the political objectives which should be pursued by the European Union and on the institutional framework necessary to achieve these aims. In doing this it, will draw on the principles of this White Paper.

PROPOSALS FOR CHANGE

The Union must renew the Community method by following a less top-down approach and complementing the EU's policy tools more effectively with non-legislative instruments.

Better involvement and more openness

No matter how EU policy is prepared and adopted, the way this is done must be more open and easier to follow and understand. The Commission will provide:

- Up-to-date, on-line information on preparation of policy through all stages of decision-making.

There needs to be a stronger interaction with regional and local governments and civil society. Member States bear the principal responsibility for achieving this. But the Commission for its part will:

- Establish a more systematic dialogue with representatives of regional and local governments through national and European associations at an early stage in shaping policy.
- Bring greater flexibility into how Community legislation can be implemented in a way which takes account of regional and local conditions.
- Establish and publish minimum standards for consultation on EU policy.
- Establish partnership arrangements going beyond the minimum standards in selected areas committing the Commission to additional consultation in return for more guarantees of the openness and representativity of the organisations consulted.

Better policies, regulation and delivery

To improve the quality of its policies, the Union must first assess whether action is needed and, if it is, whether it should be at Union level. Where Union action is required, it should consider the combination of different policy tools.

When legislating, the Union needs to find ways of speeding up the legislative process. It must find the right mix between imposing a uniform approach when and where it is needed and allowing greater flexibility in the way that rules are implemented on the ground. It must boost confidence in the way expert advice influences policy decisions.

The Commission will:

- Promote greater use of different policy tools (regulations, “framework directives”, co-regulatory mechanisms).
- Simplify further existing EU law and encourage Member States to simplify the national rules which give effect to EU provisions.
- Publish guidelines on collection and use of expert advice, so that it is clear what advice is given, where it is coming from, how it is used and what alternative views are available.

More effective enforcement of Community law is necessary not only for the sake of efficiency of the internal market but also to strengthen the credibility of the Union and its Institutions.

The Commission will:

- Establish criteria to focus its work in investigating possible breaches of Community law.
- Define the criteria for the creation of new regulatory agencies and the framework within which they should operate.

Global governance

The White Paper looks beyond Europe and contributes to the debate on global governance. The Union should seek to apply the principles of good governance to its global responsibilities. It should aim to boost the effectiveness and enforcement powers of international institutions.

The Commission will:

- Improve the dialogue with governmental and non-governmental actors of third countries when developing policy proposals with an international dimension.
- Propose a review of the Union’s international representation in order to allow it to speak more often with a single voice.

Refocused Institutions

The EU institutions and Member States must work together to set out an overall policy strategy. They should refocus the Union's policies and adapt the way they work .

The Commission will:

- Reinforce attempts to ensure policy coherence and identify long-term objectives.
- Bring forward to the next Inter-Governmental Conference proposals to refocus the Commission's executive responsibility.

The Commission calls on the Council to reinforce its capacity to take decisions and cut through different sectoral interests. The Council should also establish a stronger link between EU policy and national action. By assuming its political responsibility under the Community method, the Council would free the European Council to establish and follow more long-term strategic orientations.

The Council and the European Parliament should focus more on defining the essential elements of policy and controlling the way in which those policies are executed. The Parliament should enhance its role in feeding into the political debate the views of its electors.

HOW TO REACT TO THE WHITE PAPER

Reactions to this White Paper may be sent directly to the Commission **before 31 March 2002**. The Governance Web Site: http://europa.eu.int/comm/governance/index_en.htm will provide updated information and link with interactive debates, including debates on governance initiated by institutional and non-governmental actors, debates on the Future of Europe and the Commission's portal on interactive policy-making.

If sent to the Commission, comments should be sent to:

sg-governance@cec.eu.int

Or by post to:

**Governance White Paper,
European Commission,
C80 05/66, rue de la loi 200,
B-1049 Brussels**

Copies of the comments received will be posted on the Web Site. If you do not wish your comments to be available, you should make a specific request for confidentiality.

I. WHY REFORM EUROPEAN GOVERNANCE?

European integration has delivered fifty years of stability, peace and economic prosperity. It has helped to raise standards of living, built an internal market and strengthened the Union's voice in the world. It has achieved results which would not have been possible by individual Member States acting on their own. It has attracted a succession of applications for membership and in a few years time it will expand on a continental scale. It has also served as a model for regional integration across the world.

These results have been achieved by democratic means. The Union is built on the rule of law; it can draw on the Charter of fundamental rights, and it has a double democratic mandate through a Parliament representing EU citizens and a Council representing the elected governments of the Member States.

Yet despite its achievements, many Europeans feel alienated from the Union's work.

This feeling is not confined to the European Institutions. It affects politics and political institutions around the globe. But for the Union, it reflects particular tensions and uncertainty about what the Union is and what it aspires to become, about its geographical boundaries, its political objectives and the way these powers are shared with the Member States.

The decreasing turnout in the European Parliament elections and the Irish "No" vote also serve to show the widening gulf between the European Union and the people it serves:

- There is a perceived inability of the Union to act effectively where a clear case exists, for instance, unemployment, food safety scares, crime, the conflicts on the EU's borders and its role in the world.
- Where the Union does act effectively, it rarely gets proper credit for its actions. People do not see that improvements in their rights and quality of life actually come from European rather than national decisions. But at the same time, they expect the Union to act as effectively and visibly as their national governments.
- By the same token, Member States do not communicate well about what the Union is doing and what they are doing in the Union. "Brussels" is too easily blamed by Member States for difficult decisions that they themselves have agreed or even requested.
- Finally, many people do not know the difference between the Institutions. They do not understand who takes the decisions that affect them and do not feel the Institutions act as an effective channel for their views and concerns.

People do not necessarily feel less European. They still expect Europe-wide action in many domains, but they no longer trust the complex system to deliver what they want. In other words, people have disappointed expectations, but expectations nevertheless.

The debate on the future of Europe and the scope of the White Paper

This disenchantment and with it the fundamental questions concerning the future of Europe will be the subject of intense debate in the run up to the Inter-Governmental Conference. However, in preparing for further institutional change, the Union must start the process of reform now. There is much that can be done to change the way the Union works under the existing Treaties. This is why the Commission decided to launch in early 2000 the reform of European governance¹⁵ as a strategic objective – well in advance of the Nice European Council.

Reforming governance addresses the question of how the EU uses the powers given by its citizens. It is about how things could and should be done. The goal is to open up policy-making to make it more inclusive and accountable. A better use of powers should connect the EU more closely to its citizens and lead to more effective policies.

In order to achieve this, the Union must better combine different policy tools such as legislation, social dialogue, structural funding, and action programmes. This would contribute to strengthening the Community method.

Reforming European governance implies that the Commission must refocus on its core mission. The proposals in this paper will improve the quality of the way it initiates policy. They will ensure more clarity and effectiveness in policy execution, and maximise the impact of the Commission's actions as guardian of the Treaty.

What is the Community method?

The Community method guarantees both the diversity and effectiveness of the Union. It ensures the fair treatment of all Member States from the largest to the smallest. It provides a means to arbitrate between different interests by passing them through two successive filters: the general interest at the level of the Commission; and democratic representation, European and national, at the level of the Council and European Parliament, together the Union's legislature.

- The **European Commission** alone makes legislative and policy proposals. Its independence strengthens its ability to execute policy, act as the guardian of the Treaty and represent the Community in international negotiations.
- Legislative and budgetary acts are adopted by the **Council of Ministers** (representing Member States) and the **European Parliament** (representing citizens). The use of qualified majority voting in the Council is an essential element in ensuring the effectiveness of this method. Execution of policy is entrusted to the Commission and national authorities.
- The **European Court of Justice** guarantees respect for the rule of law.

The Commission alone cannot improve European governance, nor can this Paper provide a magic cure for everything. Change requires concerted action by all the

¹⁵ “Governance” means rules, processes and behaviour that affect the way in which powers are exercised at European level, particularly as regards openness, participation, accountability, effectiveness and coherence.

European Institutions, present and future Member States, regional and local authorities, and civil society. This paper is primarily addressed to them. Their commitment to reforming European governance will be essential in order to regain confidence before the next round of institutional reform. Elected officeholders at various levels, in particular at national level, have a crucial role in this context.

The Union's credibility will eventually be judged by its ability to add value to national policies and address people's concerns more effectively at European and global level. The White Paper identifies the tools that are needed to establish more coherence in the Union's policies and help the work of the various Institutions. It emphasises the need for EU action to be balanced and in proportion to the policy objectives pursued. This will be even more crucial in an enlarged Union. Finally, reform of European governance will improve the EU's ability to influence global developments.

Taking this White Paper further

The White Paper proposes a set of initial actions, including some which refocus the Commission on its core tasks. These will be taken forward immediately and should also inspire change in the other Institutions. The paper also launches a consultative process on the need for further action, in particular by the other Institutions and Member States.

The public consultation on this White Paper will run until 31 March 2002. It will continue to draw on the network of over 2,500 organisations and people who have already taken part in the governance debate in all parts of Europe, including the applicant countries¹⁶. By the end of 2002, the Commission will report on its progress and draw lessons from the consultation. This should allow to establish the basis for further co-operation between the Institutions on the reform of European governance under the existing Treaties.

In the meantime, the debate on the future of Europe leading to institutional changes in the next Inter-Governmental Conference will intensify. The Commission will actively participate in the preparation of the forthcoming European Council in Laeken, presenting its views on the political objectives which should be pursued by the European Union and on the institutional framework necessary to achieve them. In doing this it, will also draw on the principles of this White Paper. Moreover, the White Paper sets down markers for the future of Europe and identifies where new ways of working will be held back without corresponding changes to the EU Treaties.

II. PRINCIPLES OF GOOD GOVERNANCE

Five principles underpin good governance and the changes proposed in this White Paper: *openness, participation, accountability, effectiveness and coherence*. Each

¹⁶ Internal Commission groups have contributed this work. Their reports are published in parallel with this White Paper and can be obtained via the Governance Web Site mentioned above. The contents of these reports do not reflect the official position of the Commission. In addition, a qualitative opinion survey in the 15 Member States and in nine candidate countries contributed to the preparations of this Paper.

principle is important for establishing more democratic governance. They underpin democracy and the rule of law in the Member States, but they apply to all levels of government – global, European, national, regional and local. They are particularly important for the Union in order to respond to the challenges highlighted in the preceding chapter.

- **Openness.** The Institutions should work in a more open manner. Together with the Member States, they should actively communicate about what the EU does and the decisions it takes. They should use language that is accessible and understandable for the general public. This is of particular importance in order to improve the confidence in complex institutions.
- **Participation.** The quality, relevance and effectiveness of EU policies depend on ensuring wide participation throughout the policy chain – from conception to implementation. Improved participation is likely create more confidence in the end result and in the Institutions which deliver policies. Participation crucially depends on central governments following an inclusive approach when developing and implementing EU policies.
- **Accountability.** Roles in the legislative and executive processes need to be clearer. Each of the EU Institutions must explain and take responsibility for what it does in Europe. But there is also a need for greater clarity and responsibility from Member States and all those involved in developing and implementing EU policy at whatever level.
- **Effectiveness.** Policies must be effective and timely, delivering what is needed on the basis of clear objectives, an evaluation of future impact and, where available, of past experience. Effectiveness also depends on implementing EU policies in a proportionate manner and on taking decisions at the most appropriate level.
- **Coherence.** Policies and action must be coherent and easily understood. The need for coherence in the Union is increasing: the range of tasks has grown; enlargement will increase diversity; challenges such as climate and demographic change cross the boundaries of the sectoral policies on which the Union has been built; regional and local authorities are increasingly involved in EU policies. Coherence requires political leadership and a strong responsibility on the part of the Institutions to ensure a consistent approach within a complex system.

Each principle is important by itself. But they cannot be achieved through separate actions. Policies can no longer be effective unless they are prepared, implemented and enforced in a more inclusive way.

The application of these five principles reinforces those of proportionality and subsidiarity. From the conception of policy to its implementation, the choice of the level at which action is taken (from EU to local) and the selection of the instruments used must be in proportion to the objectives pursued. This means that before launching an initiative, it is essential to check systematically (a) if public action is really

necessary, (b) if the European level is the most appropriate one, and (c) if the measures chosen are proportionate to those objectives.

The Union is changing as well. Its agenda extends to foreign policy and defence, migration and the fight against crime. It is expanding to include new members. It will no longer be judged solely by its ability to remove barriers to trade or to complete an internal market; its legitimacy today depends on involvement and participation. This means that the linear model of dispensing policies from above must be replaced by a virtuous circle, based on feedback, networks and involvement from policy creation to implementation at all levels.

III. PROPOSALS FOR CHANGE

The proposals for change are divided into four sections. A first section focuses on improving involvement in shaping and implementing EU policy. A second section aims at improving the quality and enforcement of EU policies. A third section calls for a stronger link between European governance and the role of the Union in the world. Finally, a fourth section examines the role of the Institutions.

3.1. Better involvement

Making the way the Union works more open...

Democracy depends on people being able to take part in public debate. To do this, they must have access to reliable information on European issues and be able to scrutinise the policy process in its various stages. Major progress has been made in 2001 with the adoption of new rules giving citizens greater access to Community documents.

But the Institutions and Member States also need to **communicate more actively with the general public on European issues**. The communication policy of the Commission and the other Institutions¹⁷ will promote efforts to deliver information at national and local level, where possible making use of networks, grassroots organisations and national, regional and local authorities. Information should be presented in a way adapted to local needs and concerns, and be available in all official languages if the Union is not to exclude a vast proportion of its population – a challenge which will become more acute in the context of enlargement.

Information and communication technologies have an important role. Accordingly, the EU's EUROPA Website¹⁸, is set to evolve into an inter-active platform for information, feedback and debate, linking parallel networks across the Union.

Providing more information and more effective communication are a pre-condition for generating a sense of belonging to Europe. The aim should be to create a trans-national "space" where citizens from different countries can discuss what they perceive as being the important challenges for the Union. This should help policy makers to stay

¹⁷ See the Commission's Communication on a new framework for co-operation on the information and communication policy of the European Union, COM(2001) 354, 27.6.01.

¹⁸ www.europa.eu.int

in touch with European public opinion, and could guide them in identifying European projects which mobilise public support.

The European Institutions should jointly continue to develop EUR-LEX¹⁹, in 2002, as a single on-line point in all languages, where people can follow policy proposals through the decision-making process.

Council and the European Parliament should make, from the beginning of 2002, information available more rapidly about all stages of the co-decision process, particularly concerning the final, so-called conciliation phase.

The Member States should promote public debate on European affairs.

Reaching out to citizens through regional and local democracy...

The expansion of the Union's activities over the last fifteen years has brought it closer to regions, cities and localities, which are now responsible for implementing EU policies from agriculture and structural funding to environmental standards. The stronger involvement of regional and local authorities in the Union's policies also reflects both their growing responsibilities in some Member States and a stronger engagement of people and grass root organisations in local democracy²⁰.

Yet the way in which the Union currently works does not allow for adequate interaction in a multi-level partnership; a partnership in which national governments involve their regions and cities fully in European policy-making. Regions and cities often feel that, in spite of their increased responsibility for implementing EU policies, their role as an elected and representative channel interacting with the public on EU policy is not exploited.

There is also criticism that the legislation adopted by the Council and the European Parliament is either too detailed, or insufficiently adapted to local conditions and experience; often in stark contrast to the original proposals tabled by the Commission.

Criticism is not just focused on the Union. The principal responsibility for involving the regional and local level in EU policy remains and should remain with national administrations. But national governments are often perceived as not adequately involving regional and local actors in preparing their positions on EU policies. Each Member State should foresee adequate mechanisms for wide consultation when discussing EU decisions and implementing EU policies with a territorial dimension. The process of EU policy-making, in particular its timing, should allow Member States to listen to and learn from regional and local experiences.

¹⁹ The EUR-LEX portal already offers a 'one stop' shop to access information about pending and adopted Community law. (www.europa.eu.int/eur-lex/en/index.html).

²⁰ See opinion of the Committee of the Regions of 14.12.2000 on "New forms of governance: Europe, a framework for citizens' initiatives" (CdR 186/2000).

A complementary response at EU level is needed in three areas to build a better partnership across the various levels:

- **Involvement in policy shaping.** At EU level, the Commission should ensure that regional and local knowledge and conditions are taken into account when developing policy proposals. For this purpose, it should organise a systematic dialogue with European and national associations of regional and local government, while respecting national constitutional and administrative arrangements. The Commission welcomes on-going efforts to increase co-operation between those associations and the Committee of the Regions. Furthermore, exchange of staff and joint training between administrations at various levels would contribute to a better knowledge of each other's policy objectives, working methods and instruments.
- **Greater flexibility.** Local conditions can make it difficult to establish one set of rules that covers the whole of the Union, without tying up the legislation in excessive complexity. There should be more flexibility in the means provided for implementing legislation and programmes with a strong territorial impact, provided the level playing field at the heart of the internal market can be maintained. The Commission is also in favour of testing whether, while respecting the existing Treaty provisions, the implementation of certain EU policies could be better achieved by target-based, tripartite contracts.. Such contracts should be between Member States, regions and localities designated by them for that purpose, and the Commission. Central government would play a key role in setting up such contracts and would remain responsible for their implementation. The contract would provide that the designated sub-national authority in the Member States undertakes to implement identified actions in order to realise particular objectives defined in "primary" legislation. The contract should include arrangements for monitoring. The approach concerns regulations or directives in fields where sub-national public authorities are responsible for implementation within the national institutional or administrative system. The area of environmental policy might be a candidate for this pilot approach. Furthermore, the Commission has already committed itself to a more decentralised approach in future regional policy²¹.
- **Overall policy coherence.** The territorial impact of EU policies in areas such as transport, energy or environment should be addressed. These policies should form part of a coherent whole as stated in the EU's second cohesion report; there is a need to avoid a logic which is too sector-specific. In the same way, decisions taken at regional and local levels should be coherent with a broader set of principles that would underpin more sustainable and balanced territorial development within the Union. The Commission intends to use the enhanced dialogue with Member States and their regions and cities to develop indicators to identify where coherence is needed. It will build upon existing work, such as the European Spatial Development Perspective adopted in 1999 by Ministers responsible for spatial planning and territorial development. This work of promoting better coherence between territorial

²¹ Second Cohesion Report, COM (2001) 21 final, 31.01.2001.

development actions at different levels should also feed the review of policies in view of the Sustainable Development Strategy²².

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The Commission will:

- Establish from 2002 onwards a more systematic dialogue with European and national associations of regional and local government at an early stage of policy shaping.
- Launch, from 2002 onwards, pilot “target-based contracts” within one or more areas, as a more flexible means of ensuring implementation of EU policies.

The Committee of the Regions should:

- Play a more proactive role in examining policy, for example through the preparation of exploratory reports in advance of Commission proposals.
- Organise the exchange of best practice on how local and regional authorities are involved in the preparatory phase of European decision-making at national level.
- Review the local and regional impact of certain directives, and to report to the Commission by the end of 2002 on the possibilities for more flexible means of application. The Commission will then consider a more systematic approach to allow such flexibility for some parts of Community law.

The Member States should:

- examine how to improve the involvement of local and regional actors in EU policy-making.
- promote the use of contractual arrangements with their regions and localities.

Involving civil society...

Civil society plays an important role in giving voice to the concerns of citizens and delivering services that meet people’s needs²³. Churches and religious communities have a particular contribution to make. The organisations which make up civil society mobilise people and support, for instance, those suffering from exclusion or discrimination. The Union has encouraged the development of civil society in the applicant countries, as part of their preparation for membership. Non governmental

²² Communication on a sustainable Europe for a better world, COM(2001) 264 final, 15.5.01

²³ Civil society includes the following: trade unions and employers’ organisations (“social partners”); non-governmental organisations; professional associations; charities; grass-roots organisations; organisations that involve citizens in local and municipal life with a particular contribution from churches and religious communities. For a more precise definition of organised civil society, see the Opinion of the Economic and Social Committee on “The role and contribution of civil society organisations in the building of Europe”, OJ C329, 17.11.99 p.30.

organisations play an important role at global level in development policy. They often act as an early warning system for the direction of political debate.

Trade unions and employers' organisations have a particular role and influence. The EC Treaty requires the Commission to consult management and labour in preparing proposals, in particular in the social policy field. Under certain conditions, they can reach binding agreements that are subsequently turned into Community law (within the social dialogue). The social partners should be further encouraged to use the powers given under the Treaty to conclude voluntary agreements.

Civil society increasingly sees Europe as offering a good platform to change policy orientations and society. This offers a real potential to broaden the debate on Europe's role. It is a chance to get citizens more actively involved in achieving the Union's objectives and to offer them a structured channel for feedback, criticism and protest²⁴. This already happens in fields such as trade and development, and has recently been proposed for fisheries²⁵.

With better involvement comes greater responsibility. Civil society must itself follow the principles of good governance, which include accountability and openness. The Commission intends to establish, before the end of this year, a comprehensive on-line database with details of civil society organisations active at European level, which should act as a catalyst to improve their internal organisation.

The Economic and Social Committee must play a role in developing a new relationship of mutual responsibility between the Institutions and civil society, in line with the changes to article 257 of the EC Treaty²⁶ agreed at Nice. In order to do this, its organisation and role will have to be reconsidered. Member States should take this new role into account when appointing members to the Committee.

Like the Committee of the Regions, the Economic and Social Committee should be more active by developing opinions and exploratory reports in order to help shape policies at a much earlier stage than at present. The Treaty currently provides for both committees to give their opinion after, rather than before, proposals have been transmitted to the legislature, which minimises their impact. Working arrangements between the Commission and the Economic and Social Committee, similar to those under discussion with the Committee of the Regions, are currently being finalised to give effect to a more pro-active role.

More effective and transparent consultation at the heart of EU policy-shaping...

The Commission already consults interested parties through different instruments, such as Green and White Papers, Communications, advisory committees, business test

²⁴ This would in particular provide a follow up to the Commission's discussion document on the Commission and non-governmental organisations: Building a stronger partnership, COM(2000) 11 final, 18.1.00.

²⁵ Green Paper: The future of the common fisheries policy, COM(2001)135 final, 20.03.2001.

²⁶ "The [Economic and Social] Committee shall consist of representatives of the various economic and social components of organised civil society, and in particular representatives of producers, farmers, carriers, workers, dealers, craftsmen, professional occupations, consumers and the general interest".

panels²⁷ and ad hoc consultations. Furthermore, the Commission is developing on-line consultation through the inter-active policy-making initiative²⁸.

Such consultation helps the Commission and the other Institutions to arbitrate between competing claims and priorities and assists in developing a longer term policy perspective. Participation is not about institutionalising protest. It is about more effective policy shaping based on early consultation and past experience.

How the Commission consults: The example of the "Telecoms Package"²⁹.

The Telecoms Package of 6 measures currently in Council and the European Parliament was developed on the basis of widespread consultation.

1998-99 A number of studies assessing a range of market and regulatory issues launched. Workshops presenting and debating the studies.

May/June 1999 Working Paper on regulatory principles for telecoms reform for consultation.

Nov 1999 Communication launching the 1999 Telecoms Review setting out general orientations and inviting reaction.

Jan 2000 Two day Public Hearing with 550 participants.

April 2000 Communication on the results of the 1999 Review. More than 200 responses from national regulators, trade associations, consumer groups, industry and individuals.

May 2000 Draft legislation published in the form of five working documents for rapid consultation.

July 2000 Adoption of package of six proposals by the Commission, currently under discussion in Council and European Parliament.

The European Parliament and its committees regularly seek public and expert views through consultation and public hearings, improving the quality of its policy deliberation. Some Member States systematically consult at a national level on proposals tabled in the Council.

In all these areas more should and must be done.

The Institutions and national authorities must reinforce their efforts to consult better on EU policies. Better consultation complements, and does not replace, decision-making by the Institutions.

²⁷ www.europa.eu.int/comm/internal_market/en/update/panel/index.htm

²⁸ www.europa.eu.int/comm/internal_market/en/update/citizen/ipm.htm

²⁹ The telecoms package consists of 6 measures revising the existing regulatory framework for telecommunications markets which launched liberalisation from 1 January 1998 and which now need updating in the light of several years of effective competition. The measures address framework regulatory conditions and regulatory structures; licensing; interconnection and access; universal service; data protection and privacy, and the treatment of radio-frequency.

What is needed is a **reinforced culture of consultation and dialogue**; a culture which is adopted by all European Institutions and which associates particularly the European Parliament in the consultative process, given its role in representing the citizen. The European Parliament should play a prominent role, for instance, by reinforcing its use of public hearings. European political parties are an important factor in European integration and contribute to European awareness and voicing the concerns of citizens.

Furthermore, the involvement of national parliaments and their specialised European affairs committees, as already practised by the European Parliament, could also be encouraged.

There is currently a lack of clarity about how consultations are run and to whom the Institutions listen. The Commission runs nearly 700 ad hoc consultation bodies in a wide range of policies. The increase in the volume of international negotiations generates further ad hoc consultation. The Commission believes it needs to rationalise this unwieldy system not to stifle discussion, but to make it more effective and accountable both for those consulted and those receiving the advice. As a first step, the Commission will publish a review of existing sectoral consultative fora.

Creating a culture of consultation cannot be achieved by legal rules which would create excessive rigidity and risk slowing the adoption of particular policies. It should rather be underpinned by a **code of conduct that sets minimum standards**, focusing on what to consult on, when, whom and how to consult. Those standards will reduce the risk of the policy-makers just listening to one side of the argument or of particular groups getting privileged access on the basis of sectoral interests or nationality, which is a clear weakness with the current method of ad hoc consultations. These standards should improve the representativity of civil society organisations and structure their debate with the Institutions.

In some policy sectors, where consultative practices are already well established, the Commission could develop more extensive **partnership arrangements**. On the Commission's part, this will entail a commitment for additional consultations compared to the minimum standards. In return, the arrangements will prompt civil society organisations to tighten up their internal structures, furnish guarantees of openness and representativity, and prove their capacity to relay information or lead debates in the Member States.

In the light of practical experience of these partnership arrangements and the code of conduct, the Commission will invite the other Institutions to contribute to extending this new approach to their own activities.

The Commission will:

- Adopt before the end of 2001 minimum standards for consultation and publish them in a code of conduct.

- Develop more extensive partnership arrangements from 2002 onwards in certain sectors.

The Economic and Social Committee should play a more proactive role in examining policy, for example through the preparation of exploratory reports.

Member States should examine how to improve their consultative processes in the context of EU policy

The Council and European Parliament should review their relationship with civil society and, building on the minimum standards for consultations, contribute to a general reference framework for consultation by 2004.

Connecting with networks...

European integration, new technologies, cultural changes and global interdependence have led to the creation of a tremendous variety of European and international networks, focused on specific objectives. Some have been supported by Community funding. These networks link businesses, communities, research centres, and regional and local authorities. They provide new foundations for integration within the Union and for building bridges to the applicant countries and to the world. They also act as multipliers spreading awareness of the EU and showing policies in action.

Examples of Network-led initiatives

The yearly 'Car Free Day' on 22 September now mobilises around 800 cities in 25 European countries on a voluntary basis

The [Netd@ys](#) initiative has increased awareness of schools, pupils and teachers of new media. Last year there were about 300 Netd@ys projects involving 150,000 organisations from 85 countries and the European website received over 8 million hits.

Yet, many of these networks, whose roots reach down deep into society, feel disconnected from the EU policy process. By making them more open and structuring better their relation with the Institutions, **networks could make a more effective contribution to EU policies**. More specifically, regional and city networks that support trans-national and cross-border co-operation, for example under the Structural Funds, are held back by the diverging administrative and legal conditions which apply to each individual participating authority.

The Commission will:

- Develop by the end of 2002 a more systematic and pro-active approach to working with key networks to enable them to contribute to decision shaping and policy execution.

- Examine how the framework for trans-national co-operation of regional or local actors could be better supported at EU level, with a view to presenting proposals by the end of 2003 .

3.2 Better policies, regulation and delivery

The European Union's policies and legislation are getting increasingly complex. The reluctance of Council and European Parliament to leave more room for policy execution to the Commission means that legislation often includes an unnecessary level of detail. In national systems this would be addressed through implementing rules under the control of national parliaments rather than in the laws adopted by those Parliaments.

The level of detail in EU legislation also means that adapting the rules to technical or market changes can be complex and time-consuming. Overall the result is a lack of flexibility, damaging effectiveness. A slow legislative process is compounded by slow implementation – of the 83 internal market directives which should have been transposed in 2000, only five of them had been transposed in all Member States.

If rules are not supported or inadequately enforced, the Institutions as a whole are called into question. Apart from a new, more inclusive approach to policy shaping, the Union needs to boost confidence in the expert advice that informs its policy. It needs to improve the quality of its legislation, including better implementation and enforcement.

Confidence in expert advice...

Scientific and other experts play an increasingly significant role in preparing and monitoring decisions. From human and animal health to social legislation, the Institutions rely on specialist expertise to anticipate and identify the nature of the problems and uncertainties that the Union faces, to take decisions and to ensure that risks can be explained clearly and simply to the public.

The advent of bio-technologies are highlighting the unprecedented moral and ethical issues thrown up by technology. This underlines the need for a wide range of disciplines and experience beyond the purely scientific.

Recent food crises have highlighted the importance of informing people and policy makers about what is known and where uncertainty persists. But they have also undermined public confidence in expert-based policy-making. Public perceptions are not helped by the opacity of the Union's system of expert committees or the lack of information about how they work. It is often unclear who is actually deciding - experts or those with political authority. At the same time, a better informed public increasingly questions the content and independence of the expert advice that is given.

These issues become more acute whenever the Union is required to apply the precautionary principle and play its role in **risk assessment and risk management**. The Commission over a number of years has been responding to these challenges, for

example, through the revamping of its system of scientific committees in 1997 and ensuring that scientific advice from those committees is publicly available. The current proposal for a European Food Authority will enhance the Union's scientific capability, transparency and networking in the area of food safety.

In many other areas, networking at European and even global level show clear benefits. Expertise, however, is usually organised at a national level. It is essential that resources be put together and work better in the common interest of EU citizens. Such structured and open networks should form a scientific reference system to support EU policy-making³⁰.

The Commission will publish from June 2002 guidelines on collection and use of expert advice in the Commission to provide for the accountability, plurality and integrity of the expertise used. This should include the publication of the advice given. Over time these guidelines could form the basis for a common approach for all Institutions and Member States.

Better and faster regulation – combining policy instruments for better results ...

The European Union will rightly continue to be judged by the impact of its regulation on the ground. It must pay constant attention to **improving the quality, effectiveness and simplicity of regulatory acts**. Effective decision-making also requires the combination of different policy instruments (various forms of legislation, programmes, guidelines, use of structural funding, etc.) to meet Treaty objectives. In making full use of the Treaty, the Commission could also make proposals to take the Union's objectives forward through enhanced co-operation.

At the same time, the Union must be able to react more rapidly to changing market conditions and new problems by reducing the long delays associated with the adoption and implementation of Community rules. In many cases these may run to three years or more. A tension between faster decisions and better, but time-consuming consultation is not necessarily a problem: investment in good consultation "upstream" may produce better legislation which is adopted more rapidly and easier to apply and enforce.

Achieving improvements depends on seven factors.

- First, proposals must be prepared on the basis of **an effective analysis** of whether it is appropriate to intervene at EU level and whether regulatory intervention is needed. If so, the analysis must also assess the potential economic, social and environmental impact, as well as the costs and benefits of that particular approach. A key element in

³⁰ The creation of such a broader set of scientific reference systems is one of the objectives of the European Research Area.

such an assessment is ensuring that the objectives of any proposal are clearly identified.

- Second, **legislation is often only part of a broader solution** combining formal rules with other non-binding tools such as recommendations, guidelines, or even self-regulation within a commonly agreed framework. This highlights the need for close coherence between the use of different policy instruments and for more thought to be given to their selection.

- Third, the **right type of instrument** must be used whenever legislation is needed to achieve the Union’s objectives:

- The **use of regulations** should be considered in cases with a need for uniform application and legal certainty across the Union. This can be particularly important for the completion of the internal market and has the advantage of avoiding the delays associated with transposition of directives into national legislation.

- So-called “**framework directives**” should be used more often. Such texts are less heavy-handed, offer greater flexibility as to their implementation, and tend to be agreed more quickly by Council and the European Parliament. Whichever form of legislative instrument is chosen, **more use should be made of “primary” legislation** limited to essential elements (basic rights and obligations, conditions to implement them), leaving the executive to fill in the technical detail via implementing “secondary” rules.

- Fourth, under certain conditions, implementing measures may be prepared within the **framework of co-regulation**. Co-regulation combines binding legislative and regulatory action with actions taken by the actors most concerned, drawing on their practical expertise. The result is wider ownership of the policies in question by involving those most affected by implementing rules in their preparation and enforcement. This often achieves better compliance, even where the detailed rules are non-binding.

- It has already been used, for example, in areas such as the internal market (agreeing product standards under the so-called “New Approach” directives) and the environment sector (reducing car emissions).

- The exact shape of co-regulation, the way in which legal and non-legal instruments are combined and who launches the initiative – stakeholders or the Commission - will vary from sector to sector.

Under the following conditions the Commission will consider the use of co-regulation where it will be an effective way of achieving EU objectives.

Conditions for the use of co-regulation

Co-regulation implies that a framework of overall objectives, basic rights, enforcement and appeal mechanisms, and conditions for monitoring compliance is set in the legislation.

It should only be used where it clearly adds value and serves the general interest. It is only suited to cases where fundamental rights or major political choices are not called into question. It should not be used in situations where rules need to apply in a uniform way in every Member State. Equally, the organisations participating must be representative, accountable and capable of following open procedures in formulating and applying agreed rules. This will be a key factor in deciding the added value of a co-regulatory approach in a given case.

Additionally, the resulting co-operation must be compatible with European competition rules and the rules agreed must be sufficiently visible so that people are aware of the rules that apply and the rights they enjoy. Where co-regulation fails to deliver the desired results or where certain private actors do not commit to the agreed rules, it will always remain possible for public authorities to intervene by establishing the specific rules needed. Fifth, in other areas, Community action may be complemented or reinforced by the use of the so-called “**open method of co-ordination**”, which can already involve the applicant countries in some cases.

– The open method of co-ordination is used on a case by case basis. It is a way of encouraging co-operation, the exchange of best practice and agreeing common targets and guidelines for Member States, sometimes backed up by national action plans as in the case of employment and social exclusion. It relies on regular monitoring of progress to meet those targets, allowing Member States to compare their efforts and learn from the experience of others.

In some areas, such as employment and social policy or immigration policy³¹, it sits alongside the programme-based and legislative approach; in others, it adds value at a European level where there is little scope for legislative solutions. This is the case, for example, with work at a European level defining future objectives for national education systems.

– The Commission plays an active co-ordinating role already and is prepared to do so in the future , but the use of the method must not upset the institutional balance nor dilute the achievement of common objectives in the Treaty. In particular, it should not exclude the European Parliament from a European policy process. The open method of co-ordination should be a complement, rather than a replacement, for Community action.

Circumstances for the use of the open method of co-ordination

The use of the open method of co-ordination must not dilute the achievement of common objectives in the Treaty or the political responsibility of the Institutions. It should not be used when legislative action under the Community method is possible; it should ensure overall accountability in line with the following requirements:

³¹ See most recently the Communication on an open method of co-ordination for the community immigration policy, COM(2001)387 final, 11.7.01

- It should be used to achieve defined Treaty objectives.
- Regular mechanisms for reporting to the European Parliament should be established.
- The Commission should be closely involved and play a co-ordinating role.
- The data and information generated should be widely available. It should provide the basis for determining whether legislative or programme-based action is needed to overcome particular problems highlighted.

- Sixth, a stronger culture of **evaluation and feedback** is needed in order to learn from the successes and mistakes of the past. This will help to ensure that proposals do not over-regulate and that decisions are taken and implemented at the appropriate level.

- Seventh, the Commission has committed itself to **withdraw proposals** where inter-institutional bargaining undermines the Treaty principles of subsidiarity and proportionality or the proposal's objectives. The Council and the European Parliament must instead stick to the essential elements of legislation as mentioned above and avoid overloading or over-complicating proposals.

Council and the European Parliament must also make greater efforts to **speed up the legislative process**. When legally possible, Council should vote as soon as a qualified majority seems possible rather than pursuing discussions in the search for unanimity. In appropriate cases, the Council and the European Parliament should attempt to agree proposals in one rather than two readings with the assistance of the Commission. This may reduce the time needed to adopt legislation by 6 to 9 months.

Community law should be substantially simplified...

Building on work on single market and agricultural legislation, a **comprehensive programme of simplification** of existing rules is called for – regrouping legal texts, removing redundant or obsolete provisions, and shifting non-essential obligations to executive measures.

Simplification at EU level must be accompanied by a similar commitment from Member States. People first and foremost want less red tape at a national level – they do not care whether its origin is in European or national decisions. One of the biggest sources of concern is the tendency of Member States when implementing Community directives to add new costly procedures or to make legislation more complex. Networks should be established between those responsible for simplification at EU and at national level.

The Commission will present an Action Plan for Better Regulation to the Laeken European Council; within that framework it will:

- Promote greater use of different policy tools, (regulations, “framework directives”, guidelines and recommendations, co-regulatory mechanisms). These may be complemented where appropriate by the use of the open method of co-ordination.
- Limit its proposals for primary legislation to essential elements, while providing greater scope for implementing measures to complete the technical details of those proposals.
- Launch a high-profile programme to review and simplify Community legislation adopted before 2000, supported by fast track procedures in Council and European Parliament for this work.

Council and European Parliament should limit primary legislation to essential elements.

Member States should refrain from a disproportionate level of detail or complex administrative requirements when implementing Community legislation.

Better application of EU rules through regulatory agencies

A range of national regulatory agencies exist across the Member States in areas with a need for consistent and independent regulatory decisions. Increasingly these regulators have an important role in applying Community law.

At EU level, twelve independent agencies have been created. The majority of these bodies have either an information gathering task, such as the European Environment Agency in Copenhagen or they assist the Commission by implementing particular EU programmes and policies, such as the European Training Foundation in Turin. In three cases EU agencies have a regulatory role³².

The creation of further autonomous **EU regulatory agencies** in clearly defined areas will improve the way rules are applied and enforced across the Union. Such agencies should be granted the power to take individual decisions in application of regulatory measures. They should operate with a degree of independence and within a clear framework established by the legislature. The regulation creating each agency should set out the limits of their activities and powers, their responsibilities and requirements for openness.

The advantage of agencies is often their ability to draw on highly technical, sectoral know-how, the increased visibility they give for the sectors concerned (and sometimes the public) and the cost-savings that they offer to business. For the Commission, the creation of agencies is also a useful way of ensuring it focuses resources on core tasks.

Conditions for the creation of regulatory agencies at EU level

³² The Office of Harmonisation in the Internal Market (Alicante) and the Community Plant Variety Office (Angers) take individual decisions on the grant of European trademarks and plant variety rights. The European Agency for the Evaluation of Medicines (London) makes a technical assessment of applications for the approval of new medicines prior to a Commission decision.

The Treaties allow some responsibilities to be granted directly to agencies. This should be done in a way that respects the balance of powers between the Institutions and does not impinge on their respective roles and powers . This implies the following conditions:

- Agencies can be granted the power to take individual decisions in specific areas but cannot adopt general regulatory measures. In particular, they can be granted decision making power in areas where a single public interest predominates and the tasks to be carried out require particular technical expertise (e.g. air safety).
- Agencies cannot be given responsibilities for which the Treaty has conferred a direct power of decision on the Commission (for example, in the area of competition policy).
- Agencies cannot be granted decision-making power in areas in which they would have to arbitrate between conflicting public interests, exercise political discretion or carry out complex economic assessments.
- Agencies must be subject to an effective system of supervision and control.

The Commission will consider the creation of regulatory agencies on a case-by-case basis. Currently, proposals are before Council and the European Parliament for three agencies: a European food authority, a maritime safety agency and an air safety agency with only the latter having a clear power to take individual decisions.

The Commission will:

- Define in 2002 the criteria for the creation of new regulatory agencies in line with the above conditions and the framework within which they should operate.
- Set out the Community's supervisory responsibilities over such agencies.

Better application at national level

Ultimately the impact of European Union rules depends on the willingness and capacity of Member State authorities to ensure that they are transposed and enforced effectively, fully and on time. Late transposition, bad transposition and weak enforcement all contribute to the public impression of a Union which is not delivering. The prime responsibility for this lies with national administrations and courts.

Strengthening their administrative capacity of applicant countries is already a key theme of the pre-accession strategy and these efforts will need to be sustained after they join. The existing Member States should ensure that they too improve their performance and make adequate resources available in this field. The Union can effectively draw on the experience acquired with the applicant countries, such as the "twinning arrangements". Current and future Member States should consider setting up co-ordination units within central government to improve the enforcement of Community law.

At the same time, the feeling persists that Community rules are “foreign laws”. **EU law is part of the national legal order** and must be enforced as such. Despite long-standing co-operation with the European Court of Justice, national lawyers and courts should be made more familiar with Community law, and assume responsibility in ensuring the consistent protection of rights granted by the Treaty and by European legislation. The Commission will continue to support judicial co-operation and the training of lawyers and judges in Community law, but Member States themselves will have to step up their efforts in this field.

The role and effectiveness of the EU Ombudsman and of the Petitions’ Committee of the European Parliament should be complemented by creating networks of similar existing bodies in the Member States capable of dealing with disputes involving citizens and EU issues. It should improve people’s knowledge of the extent and limits of their rights under Community law, and help them find which Member State authorities can resolve problems. In some highly specific sectors, the creation of European regulatory agencies as proposed above will also contribute to a more uniform application of rules throughout the Community.

The Union is based on the rule of law. Monitoring closely the application of Community law is an essential task for the Commission if it is to make the Union a reality for businesses and citizens. The Commission will therefore pursue infringements with vigour. In this context, individual complaints about breaches of Community law are important. The Commission has already adopted measures to improve and speed up internal procedures for handling such complaints and these should now be codified and published.

However, as far as individual complaints are concerned, a lengthy legal action against a Member State is not always the most practical solution. The main aim of an infringement action is to oblige the offending Member State to remedy its breach of Community law. Yet even after a ruling by the European Court of Justice further legal steps by the complainant may be required before national courts in order to enforce his or her rights. In order to maximise the impact of its work in dealing with complaints, the Commission will refocus on-going efforts and establish the criteria that it will use in prioritising cases including the following orientations:

Priority attached to treatment of possible breaches of Community law

The Commission will focus on:

- The effectiveness and quality of transposition of directives as the most effective way of avoiding individual problems arising at a later stage.
- Situations involving the compatibility of national law with fundamental Community principles.
- Cases that seriously affect the Community interest (e.g. cases with cross-border implications) or the interests that the legislation intended to protect.

- Cases where a particular piece of European legislation creates repeated implementation problems in a Member State.
- Cases that involve Community financing.

Such cases should be handled as a priority in the framework of formal infringement procedures. In other cases, other forms of intervention could be explored before launching formal infringement proceedings.

Finally, the Commission will continue to pursue an active dialogue with the Member States on enforcement. This has the advantage of improving feedback on how rules are applied in practice. It also can lead to a faster resolution of a potential infringement than a full court case and therefore offer a quicker solution to the person at the origin of a complaint.

The Commission will:

- Propose in 2002 twinning arrangements between national administrations to share best practice in implementing measures within particular sectors, drawing on the experience with applicant countries, and promote the awareness on Community law among national courts and lawyers.
- Establish in 2002 criteria that will be used in prioritising the investigation of possible breaches of Community law .
- Codify the current administrative rules concerning the handling of complaints.

Member States must step up their efforts to improve the quality of transposition and implementation. They must contribute to improving the knowledge of Community law, encourage national courts to take a more active role in controlling the application of Community rules. They should increase the capacity for dispute settlement through networks of ombudsmen or mediators.

3.3. The EU's contribution to global governance

The proposals in the White Paper have been drawn up against the background of enlargement, but they also offer a useful contribution to global governance. The Union's first step must be to **reform governance successfully at home in order to enhance the case for change** at an international level.

The objectives of peace, growth, employment and social justice pursued within the Union must also be promoted outside for them to be effectively attained at both European and global level. This responds to citizens' expectations for a powerful

Union on a world stage. Successful international action reinforces European identity and the importance of shared values within the Union.

In applying the principles of good governance to the EU's global responsibility, the Union should be more accessible to governmental and non-governmental stakeholders from other parts of the world. This is already part of its strategy for sustainable development, but it must go hand in hand with a commitment by such stakeholders as to their representativity and that they will assume their responsibilities in responding to global challenges. The Union should take the global dimension into account in assessing the impact of policies, in establishing guidelines for the use of expertise, and through a more pro-active approach to international networks.

By acknowledging the global dimension more strongly, the Union will strengthen its voice in multilateral negotiations. It should aim to improve the effectiveness and legitimacy of global rule making, working to modernise and reform international and multi-lateral institutions in the medium to long term. The goal should be to boost the effectiveness and enforcement powers of multi-lateral institutions. In the short term, the Union should build partnerships with other countries in order to promote greater co-operation and coherence between the activities of existing international organisations and increase their transparency.

International action should be complemented by new tools. Many ideas in this White Paper could be tested at global level, such as peer review of progress made towards internationally agreed targets or the development of co-regulatory solutions to deal with aspects of the new economy. As in the Union, these approaches should complement successful elements of international public law, most notably the World Trade Organisation and the International Court of Justice.

To achieve these objectives, the Union needs to speak more with a single voice. It should strengthen its representation in international and regional fora, including in relation to economic and financial governance, the environment, development and competition policy. Often, important improvements can and should be introduced under the current Treaty, and would considerably improve the visibility of what the Union is doing at the global level. In some areas, like finance, a change in the Treaty is required.

The Commission will:

- Improve the dialogue with governmental and non-governmental actors of third countries when developing policy proposals with an international dimension.
- Promote the use of new tools at global level as a complement to “hard” international law.

- Promote a discussion in 2002 on how the Union can contribute to a comprehensive reform of multilateral institutions and improve co-operation and openness of international organisations.
- Propose a review of the Union's international representation under the existing Treaties in order to speak more often with a single voice and propose changes at the next Inter-Governmental Conference.

3.4. *Refocused policies and institutions*

Connecting the European Union to its citizens means identifying clear policies and objectives within an overall vision of where the Union is going. People need to understand better the political project which underpins the Union.

The task is not easy. The step by step integration which has characterised the Union's development has tended to slice policies into sectoral strands with different objectives and different tools: over time the capacity to ensure the coherence has diminished. The current working methods of the Institutions and the relations with the Member States prevent them from showing the necessary leadership.

As a partial response, the Union has launched cross-cutting policy agendas, such as those developed in Tampere (1999) for freedom, security and justice issues; in Lisbon (2000) with an agenda for economic and social renewal extending up to 2010; or in Göteborg (2001) with the strategy for sustainable development.

But more needs to be done. The Institutions and the Member States must work together to set out an overall policy strategy. For this purpose, they should already refocus the Union's policies and adapt the way the Institutions work under the existing Treaties.

Refocus EU policies

The introduction of the euro and enlargement will be catalysts for fundamental changes. The euro will soon become a tangible reality in people's pockets and will increase the visibility of the Union at home and in the world. Enlargement will raise particular problems in terms of the wide gaps between rich and poor countries. It will bring new challenges for the management of the Union's external frontiers and the relationships with our future neighbours.

Refocusing policies means that the Union should **identify more clearly its long-term objectives**. These may, with the overall objective of sustainable development, include improving human capital, knowledge and skills; strengthening both social cohesion and competitiveness; meeting the environmental challenge; supporting territorial diversity; and contributing to regional peace and stability. Improved focus will help to guide the reform of policies in preparation for a successful enlargement and ensure that expanding the Union does not lead to weakening or dilution of existing policies.

In setting priorities and ensuring coherence, the Institutions must guard against decisions on future policies which are inspired by short-term thinking on long-term

challenges. This is a real risk as in the near future institutional reform, important policy choices, budgetary bargaining and enlargement could all coincide. It is likely to stretch the Union's capacity to show leadership through a coherent vision of the future. The Union must also continue to ensure that it has adequate resources to carry out the tasks assigned to it.

Within the Commission, important steps have been taken to strengthen its capacity for strategic planning and policy setting as one of the three pillars of the on-going administrative reforms. They are reflected through key events each year that promote a political debate within the framework of the Commission's five year strategic objectives:

- The Commission's Annual Policy Strategy at the start of each year focuses on identifying strategic priorities with a 2 to 3 year horizon. It enables a medium term, more coherent approach, and provides an essential reality check to ensure that the necessary resources are available.
- The Commission President in his annual State of the Union address in the European Parliament surveys the progress made against the Commission's strategic priorities and indicates new challenges on the horizon. This is complemented by the annual Synthesis Report to the Spring European Council which covers the Union's economic, social and environmental policies.
- In addition to this, from 2002 onwards, the annual report on the implementation of the Amsterdam Protocol on Subsidiarity and Proportionality will be oriented towards the main objectives of European Union policies. It will investigate the extent to which the Union has applied the proportionality and subsidiarity principles in pursuing its main goals.

However, attempts to structure a better debate on policy coherence need to be built on a dialogue between the Institutions on future objectives and priorities for the Union. The Commission's role in initiating policy and steering the long-term agenda can be particularly effective in preparing the **European Council**. These Summits, which now take place four times a year, bring together the fifteen Heads of State and Government and the Commission President.

The European Council should have a more important role in shaping the strategic direction for the Union in partnership with the Commission. It should not deal with the day to day detail of EU policies. The requirement for consensus in the European Council often holds policy-making hostage to national interests in areas which Council could and should decide by a qualified majority of Member States. This is one example of a failure by the Council to assume its political responsibility for decision-making within the Community method.

Refocus the Institutions

To deliver better policies, the Union must revitalise the Community method. Everyone should concentrate on their core tasks: the Commission initiates and executes policy;

the Council and the European Parliament decide on legislation and budgets - whenever possible in Council using qualified majority voting, the European Council exerts political guidance and the European Parliament controls the execution of the budget and of the Union's policies.

This means changes in the way the Institutions work. A lot could be done already in the short term without amending existing Treaties. A greater effort to ensure the consistency of what is done in different sectoral Councils is needed. The **Council of Ministers**, in particular the General Affairs Council composed of Ministers for Foreign Affairs, has lost its capacity to give political guidance and arbitrate between sectoral interests, particularly where this involves resolving disputes between different home departments over the position to be taken on EU proposals. Some changes in the way it works have already been introduced by Council. The Presidency Conclusions of the Göteborg European Council called again for an 'effective co-ordination between different Council formations'. The consensus is that progress has been slow so far.

It is time to recognise that the Union has moved from a diplomatic to a democratic process, with policies that reach deep into national societies and daily life. There is a need for the Council to develop its capacity to co-ordinate all aspects of EU policy both in the Council and at home. This would free the European Council to refocus its activity on shaping strategic objectives and monitoring more effectively the Union's success in achieving them.

The **European Parliament and all national parliaments** of the Union and the applicant countries should become more active in stimulating a public debate on the future of Europe and its policies³³. The strong relationship between changes at national level, EU policies and global developments cannot simply find its response in Brussels. These changes should be discussed in a national context and in each national parliament. The Commission would welcome public debates, jointly organised by the European and national Parliaments, on the Union's policies.

Moreover, the European Parliament should enhance its control on the execution of EU policies and the implementation of the budget. This means departing from the present emphasis on detailed accounting with more policy-oriented control based on political objectives. The areas in which co-decision should apply must be reviewed in order to reinforce the role of the European Parliament.

The **Commission** must focus on its Treaty tasks of policy initiation; execution; guardian of the Treaty; and international representation of the Community. The measures proposed in this White Paper, including an enhanced dialogue with European and national association of regional and local government, better and more open consultation of civil society, better use of expert advice, and better impact assessment will help to improve the quality of policy proposals.

³³ Member States should exchange best practice on the application of the Protocol to the Amsterdam Treaty on the role of national parliaments in the European Union.

The link between European and global governance should lead to the Union speaking more often with a single voice. The prioritisation for dealing with complaints about breaches of Community law will maximise the impact of the Commission's work as guardian of the Treaty.

The proposals to simplify Community legislation further, better regulation through a greater diversity of policy tools and their combined use, and tri-partite contractual arrangements will all improve the quality of policy execution. The increased use of regulatory agencies will ensure better execution and enforcement of policies in specific cases. It will also avoid having to assign Commission resources to too technical tasks.

In the same spirit, the Commission has already proposed a communication and a regulation laying down the framework for the work of "executive" agencies under the Commission's control. This means using external executive agencies rather than Commission resources to management tasks for spending programmes.

It must also be clearer who is responsible for policy execution. This constitutes the pre-condition for making the EU system more open and accountable to all European citizens.

The main responsibility for executing policy and legislation by adopting implementing regulations or decisions is normally conferred on the Commission. The conditions under which the Commission adopts those executive measures should be reviewed.

In the end, this should lead to a situation where

- legislation defines the conditions and limits within which the Commission carries out its executive role, and
- a simple legal mechanism allows Council and European Parliament as the legislature to monitor and control the actions of the Commission against the principles and political guidelines adopted in the legislation.

This change would make decision-making simpler, faster and easier to understand. It would improve accountability, helping Council and the European Parliament to make political judgements on how well the executive process is working.

If these orientations are followed the need to maintain existing committees, notably regulatory and management committees³⁴, will be put into question. Therefore a review of existing committees would have to be undertaken and their continued existence assessed. This assessment should take account of the need for expert advice for the implementation of EU policies.

This adjustment of the responsibility of the Institutions, giving control of executive competence to the two legislative bodies and reconsidering the existing regulatory and management committees touches the delicate question of the balance of power

³⁴ Committees composed of Member States administrations assisting the Commission for the exercise of implementing powers (see decision 1999/468/EC, "comitology" decision).

between the Institutions. It should lead to modifying Treaty article 202 which permits the Council alone to impose certain requirements on the way the Commission exercises its executive role. That article has become outdated given the co-decision procedure which puts Council and the European Parliament on an equal footing with regard to the adoption of legislation in many areas. Consequently, the Council and the European Parliament should have an equal role in supervising the way in which the Commission exercises its executive role. The Commission intends to launch a reflection on this topic in view of the next Inter-Governmental Conference.

The Commission will:

- Use its right of initiative to focus debates more strongly on policy coherence and identifying long-term objectives, building upon on-going efforts for strategic planning and reporting.
- Bring forward at the next Intergovernmental Conference proposals to refocus executive responsibility on the Commission, while streamlining the control by Council and the European Parliament over how the Commission uses its executive powers.

The Council should improve the co-ordination between its various formations as well as its capacity for political guidance and its ability to link EU and national action.

The European Council should strengthen its focus on strategic objectives.

The European and national Parliaments should play a central role in stimulating public debate on the future Europe and its policies.

IV. FROM GOVERNANCE TO THE FUTURE OF EUROPE

The challenge for the Union is to renew the European political process. The questions raised by this White Paper and the answers it offers are linked to that renewal. This paper starts a process responding to the disenchantment of many of the Union's citizens. Alienation from politics is not just a European problem, it is global, national and local. But for the Union it represents a particular challenge. Given the deep level of integration already achieved, people have similar expectations for the Union as they have for domestic politics and political institutions. But the Union cannot develop and deliver policy in the same way as a national government; it must build partnerships and rely on a wide variety of actors. Expectations must be met in different ways.

Our overall goal draws on the simple principle that has guided European integration since the European Community was founded: integrate the people of Europe, while fully respecting individual national identities. The reforms proposed are possible if the Union rekindles the original spirit of the EU Treaties and makes full use of the flexibility they offer.

Five political principles - **openness, participation, accountability, effectiveness and coherence** underpin the proposals in this White Paper. They should guide the Union in

organising the way it works and in pushing reforms forward within the current Treaty, but they also provide markers for the debate on the future of Europe.

Together they allow better use of the principles of proportionality and subsidiarity. This is reflected, for example, in the weight attached in this White Paper to using the right combination of instruments to deliver policies that are matched to the objectives pursued, to limiting legislation to its essential elements, and to the use of contracts to take greater account of local conditions.

Present and future: a question of political will...

Building on these principles, the proposals in this White Paper will:

- **Structure the EU's relationship with civil society.** A code of conduct for consultation will identify responsibilities and improve accountability of all partners. It will enhance dialogue, and contribute to the openness of organised civil society.
- **Make greater use of the skills and practical experience of regional and local actors.** In the first place, this is an issue for national authorities according to their national constitutional and administrative arrangements.. At the same time the Union should make fuller use of the existing potential for flexibility to improve the ways European policies are applied on the ground.
- **Build public confidence in the way policy makers use expert advice.** The EU's multi-disciplinary expert system will be opened up to greater public scrutiny and debate. This is needed to manage the challenges, risks and ethical questions thrown up by science and technology.
- **Support the clearer definition of EU policy objectives and improve the effectiveness of EU policies** by combining formal legislation with non-legislative and self-regulatory solutions to better achieve those objectives.
- **Set out the conditions for establishing EU regulatory agencies.** These agencies can reinforce the effectiveness and visibility of EU law in the eyes of both business and the public by bringing decisions in some of the most complex and technical areas closer to the sectors affected.
- **Refocus the roles and responsibilities of each Institution.** This should help citizens to hold their political leaders and the Institutions to account for the decisions that the Union takes.

Carrying these actions forward does not necessarily require new Treaties. It is first and foremost **a question of political will**. It is part of a wider process. Changing the way the Union works calls not only for a response from the Commission, but also from all those interested, particularly the Council, the European Parliament, the Member States and European citizens.

By adapting governance at home, the Union will be better placed to contribute to new forms of global governance. Policies and global institutions must respond to popular concerns.

A new focus for the Union's Institutions...

But what will really change if these changes are implemented? At the heart of the proposed reform of governance is the refocusing of the Institutions – the Commission, the Council, and the European Parliament. This should lead to:

- **A more targeted use by the Commission of its right of initiative.** Better consultation and involvement, a more open use of expert advice and a fresh approach to medium-term planning will allow it to consider much more critically the demands from the Institutions and from interest groups for new political initiatives. It will be better placed to act in the general European interest.
- **EU legislation which is stripped back to essential principles and a framework setting out how they should be implemented.** The White Paper shows how the Council and European Parliament can focus more on political direction and content, leaving implementation to the executive. But at the same time, both Institutions should be able to streamline their control over the way the Commission carries out its executive responsibility.
- **The more effective involvement of national actors in the shaping, application and enforcement of Community rules and programmes.** This will result from the proposals on dialogue, decentralisation, stronger co-operation between administrations, and more effective enforcement of Community law. Moreover, the greater the participation in European policies of national and regional actors, the more they will be prepared to inform the public about those policies.

This refocusing of institutional roles is an important step in preparing and managing a successful enlargement.

A renewed Community method as the model for the future...

Both the proposals in the White Paper and the prospect of further enlargement lead in one direction: a **reinvigoration of the Community method**. This means ensuring that the Commission proposes and executes policy; the Council and the European Parliament take decisions; and national and regional actors are involved in the EU policy process.

The Community method has served the Union well for almost half a century. It can continue to do so, but it must be brought up to date.

In setting out the consequences of better European governance for the Institutions, the White Paper is drawn into the debate on the future of Europe. Reforming European governance also sketches a path towards future Treaty changes at the next Inter-Governmental Conference – it presents the outlines of a model for the Union's future political organisation:

- In **dividing powers between the legislature and the executive**, the model follows that of national democracies. At European level, separating these two roles would make it easier to apply the principles of subsidiarity and proportionality. In the context of a gradual extension of the areas where decisions are taken jointly by the Council and the European Parliament (the so called co-decision procedure), those two Institutions should enjoy equal roles. That is not the case under the current Treaty. At the same time, this clarification of roles must allow the Commission to assume full executive responsibility.

- The Union needs **clear principles identifying how competence is shared between the Union and its Member States**. In the first place this is to respond to the public's frequent question "who does what in Europe?" A common vision is needed to answer this question. The White Paper has highlighted a tangible Europe that is in full development; a Union based on multi-level governance in which each actor contributes in line with his or her capabilities or knowledge to the success of the overall exercise. In a multi-level system the real challenge is establishing clear rules for how competence is shared – not separated; only that non-exclusive vision can secure the best interests of all the Member States and all the Union's citizens.

This White Paper in starting a process responds to the expectations of the Union's citizens. It should enable them to see the Union as an instrument through which they can bring about change. The reflections on these reforms will now continue; they will be completed by the wider process of constitutional reform to be initiated at the European Council in Laeken: a process to which the Commission will actively contribute.

ANNEX II
REPORT ON THE COMMISSION WHITE PAPER ON
EUROPEAN GOVERNANCE

FINAL
A5-0399/2001

15 November 2001
(COM(2001) 428 – C5-0454/2001 – 2001/2181(COS))

Committee on Constitutional Affairs

Rapporteur: Sylvia-Yvonne Kaufmann

PROCEDURAL PAGE

By letter of 26 July 2001, the Commission forwarded to Parliament its White Paper on European governance (COM(2001) 428 – 2001/2181(COS)).

At the sitting of 12 November 2001 the President of Parliament announced that she had referred the White Paper to the Committee on Constitutional Affairs as the committee responsible and to all interested committees for their opinions (C5-0454/2001).

The Committee on Constitutional Affairs had appointed Sylvia-Yvonne Kaufmann rapporteur at its meeting of 24 January 2001.

It considered the Commission White Paper and the draft report at its meetings of 21 June, 13 September, 11 October, 12 November and 13 November 2001.

At the last meeting it adopted the motion for a resolution unanimously.

The following were present for the vote: Giorgio Napolitano, chairman; Johannes Voggenhuber, and Ursula Schleicher, vice-chairmen; Sylvia-Yvonne Kaufmann, rapporteur; Teresa Almeida Garrett, Carlos Carnero González, Richard Corbett, Armando Cossutta, Giorgos Dimitrakopoulos, Manuel António dos Santos, Olivier Duhamel, Andrew Nicholas Duff, Monica Frassoni, José María Gil-Robles Gil-Delgado, Michel Hansenne, (for Christopher J.P. Beazley), Piia-Noora Kauppi (for Iñigo Méndez de Vigo, pursuant to Rule 153(2)), Jo Leinen, Hanja Maij-Weggen, Hans-Peter Martin, Konrad K. Schwaiger (for Lennart Sacrédeus), The Earl of Stockton and Dimitris Tsatsos.

The explanatory statement will be presented orally in plenary sitting.

The opinions of the Committee on Budgets, the Committee on Economic and Monetary Affairs, the Committee on Legal Affairs and the Internal Market, the Committee on Culture, Youth, Education, the Media and Sport, the Committee on the Environment, Public Health and Consumer Policy, the Committee on Women's Rights and Equal Opportunities and the Committee on Petitions are attached.

The report was tabled on 15 November 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

MOTION FOR A RESOLUTION

European Parliament resolution on the Commission White Paper on European governance (COM(2001) 428 – C5-0454/2001 – 2001/2181(COS))

The European Parliament,

- having regard to the Commission White Paper on European governance (COM(2001) 428)³⁵ – C5-0454/2001,
- having regard to of the Treaty on European Union, and in particular Articles 1, 3, 5 and 6 thereof,
- having regard to the Treaty of Amsterdam's Protocol No 7 on the application of the principles of subsidiarity and proportionality and Protocol No 9 on the role of national parliaments in the European Union,
- having regard to the Charter of Fundamental Rights of the European Union, in particular Article 39 (Right to vote and stand as the candidate at elections to the European Parliament), Article 41 (Right to good administration) and Article 42 (Right of access to documents),
- having regard to the conclusions of the Lisbon European Council, in which the Commission, the Council and the Member States were asked to set out by 2001 a strategy for further coordinated action to simplify the regulatory environment, including the performance of public administration, at both national and Community level,
- having regard to the Group of Senior Advisers set up by European ministers responsible for public administration in Strasbourg on 7 November 2000, which should be involved in drawing up the strategy specified by the Lisbon European Council,
- having regard to its resolution of 10 December 1996³⁶ on the participation of citizens and social actors in the institutional system of the European Union,
- having regard to its resolution of 15 April 1999³⁷ on improvements in the functioning of the Institutions without modification of the Treaties,
- having regard to its resolution of 26 October 2000³⁸ on the Commission reports to the European Council: Better lawmaking - A shared responsibility (1998) and Better lawmaking 1999,
- having regard to its resolution of 25 October 2001³⁹ on the reform of the Council,

³⁵ OJ C 287, 12.10.2001, p. 1

³⁶ OJ C 20, 20.1.1997, p. 20.

³⁷ OJ C 219, 30.7.1999, p. 427.

³⁸ OJ C 197, 12.7.2001, p. 433.

³⁹ OJ not yet published

- having regard to the Commission White Paper on reform of the Commission (COM(2000) 200)⁴⁰,
 - having regard to its resolution of 30 November 2000⁴¹ on the Commission White Paper on reform of the Commission,
 - having regard to the opinion of the Committee of the Regions on new forms of governance: Europe - a framework for citizens' initiative of 14 December 2000⁴²,
 - having regard to the Commission's interim report of 7 March 2001 to the Stockholm European Council on improving and simplifying the regulatory environment (COM(2001) 130),
 - having regard to the opinion of the Economic and Social Committee of 25 April 2001⁴³ on organised civil society and European governance,
 - having regard to the report of the Committee of the Regions of 20 September 2001 on grassroots representation⁴⁴,
 - having regard to Rule 47(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on Budgets, the Committee on Economic and Monetary Affairs, Committee on Legal Affairs and the Internal Market, the Committee on the Environment, Public Health and Consumer Policy, the Committee on Culture, Youth, Education, the Media and Sport, the Committee on Women's Rights and Equal Opportunities and the Committee on Petitions (A5-0399/2001),
- A. whereas reform of 'European governance' must be based on a fundamental critical analysis of the democratic deficit and hence also a status report on the application of the principles of legitimacy, parliamentary scrutiny, open government, scrutiny and participation,
- B. whereas the Commission considers its White Paper to be the first step in a reform that will take several years, will be implemented jointly with the other institutions, and will contribute to the debate on the future of Europe,
- C. whereas the new international situation requires the European Union to improve the way it functions and the consistency of Community policies in order to make its external action more effective and to assume a key role on the world stage,
- D. whereas there are close and sometimes inseparable links between the reform of the Commission itself, governance reform and the constitutional process on the future of the Union,
- E. whereas the enlargement of the Union will confront its institutions with completely

⁴⁰ In particular Chapter IV: Improving the dialogue with civil society.

⁴¹ OJ C 228, 13.8.2001, p. 211.

⁴² CdR 182/2000.

⁴³ OJ C193, 10.7.2001, p. 117.

⁴⁴ CdR 436/2000.

new challenges, which require a far-reaching review of its working methods and whereas the European Parliament will make its contribution to this process - in the form of internal reform which has already started and, in addition, within the framework of the work of a Convention with a view to the 2004 IGC on the further constitutionalisation of the Union,

- F. whereas it is regrettable that the White Paper does not contain clear indications as to how 'governance' can be improved by increasing the transparency of the Council as co-legislator, through its Rules of Procedure and without amending the Treaties,
- G. whereas the concept of efficiency in the sense of administrative efficiency must not jeopardise democratic legitimisation,
- H. whereas the degree of legitimacy and acceptance of the European Union depends to a great extent on how effective its decisions are,
- I. whereas the judicial mechanisms and the division of powers between the institutions are not, on their own, enough to stimulate interest on the part of citizens, and whereas a new method, as well as an appropriate communication campaign, should be introduced,
- J. whereas the White Paper's main concern is to enhance the acceptance and legitimacy of the European Union through greater involvement of citizens and civil society in the framing and implementation of Union policy,
- K. whereas, on the one hand, elements of participatory democracy in the political system of the Union must be introduced cautiously with a constant eye to the recognised principles and structural elements of representative democracy and the rule of law and, on the other, citizens of the Union rightly expect transparent decision-making processes and, at the same time, clear political accountability for decisions,
- L. whereas the principles of specific authority⁴⁵, subsidiarity⁴⁶, proportionality⁴⁷ and respect for the national identities of the Member States⁴⁸ set strict limits on any horizontal delegation of powers to autonomous EU regulatory agencies and any vertical delegation of powers and tasks directly by the Union to regional or local level for the purposes of 'stronger involvement of regional and local authorities in the Union's policies'⁴⁹, as the Commission concedes,
- M. whereas, on the other hand, the contention that the way in which the Union currently works does not allow for 'a partnership in which national governments involve their regions and cities fully in European policy'⁵⁰ does not appear to be justified, because the Member States are well able under the Treaties to provide

⁴⁵ Article 5 of the EU Treaty and Article 5, first paragraph, of the EC Treaty.

⁴⁶ Article 2, second paragraph, of the EU Treaty and Article 5, second paragraph, of the EC Treaty.

⁴⁷ Article 6(4) of the EU Treaty and Article 5, third paragraph, of the EC Treaty.

⁴⁸ Article 6(3) of the EU Treaty.

⁴⁹ White Paper 3.1.

⁵⁰ White Paper 3.1.

appropriately for the involvement of their regions and local authorities in the shaping and implementation of EU policy, in keeping with their respective constitutional systems,

- N. whereas screening of the 'unwieldy system' of almost 700 advisory bodies on which the Commission relies is long overdue but, according to the White Paper on reform of the Commission, a list of the committees and working groups involved in formal or structured consultation procedures (Action 5)⁵¹ was to have been drawn up and published by June 2001, on the other hand a number of proposals mentioned in the White Paper such as 'on-line consultation through the inter-active policy-making initiative'⁵² actually give rise to the risk of an escalation in consultation and such a development would be incompatible with the White Paper's other goal of 'reducing the long delays associated with the adoption and implementation of Community rules'⁵³,
- O. whereas an easily achievable but important breakthrough in terms of transparency would be for the Commission to undertake to attach in future to each legislative proposal a list of all the committees, experts, associations, organisations and institutes consulted when the proposal was drafted,
- P. whereas the Union should no longer put off steps to reduce the denseness of regulation, i.e. to tackle the issue of how detailed regulation should be at Union level, not least in view of enlargement, because otherwise the bodies involved in lawmaking will be in danger of imploding,
- Q. whereas a solution to this problem requires a new approach to the issue of delegation of lawmaking ('commitology') and a change in the Community Treaty (Article 202 of the EC Treaty) to put the Council and Parliament on equal footing and the Commission's statements on this matter are therefore to be welcomed and its further thoughts on this issue, in particular on a 'simple legal mechanism',⁵⁴ are awaited with great interest,
- R. whereas, although they have a direct impact on the general public, the measures funded from the Union's budget do not have a high enough profile and therefore fail to make people sufficiently aware of the European added value provided,
1. Welcomes the Commission's readiness to examine critically and without exception the 'rules, processes and behaviour that affect the way in which powers are exercised at European level 'Governance'⁵⁵ and to effect change;
 2. Warns the Commission nonetheless against taking measures in the legislative sphere which might affect the roles of Parliament and the Council in the legislative process before Parliament has been fully consulted;

⁵¹ Reforming the Commission – a White Paper – Part II – Action Plan, IV – (COM(2000) 200)

⁵² White Paper 3.1.

⁵³ White Paper 3.2.

⁵⁴ White Paper 3.4.

⁵⁵ White Paper, I, footnote 1.

3. Proposes instead that the White Paper should be seen as initiating a purposeful dialogue between the institutions of the Union on governance reform, including measures in the 'first phase', and for the outcome to be incorporated into a revised text by the end of 2002;
4. Welcomes the establishment of an interinstitutional working group, as proposed by President Prodi on 2 October 2001;
5. Reiterates its confidence in the Community method and advocates maintaining the institutional balance as the most appropriate way of moving forward in terms of integration;
6. Points out first of all that the principle of European governance cannot exist without democratically adopted own resources and without a major simplification of budgetary procedures that will ensure that they are properly understood by the general public;
7. Welcomes the efforts being made by the Commission to improve the planning of procedures; considers, however, that the strategic planning process should be reviewed in the light of the political priorities expressed by the budgetary authority and that the human resources allocated to implementing policies should be adjusted accordingly;

Principles

8. Confirms that the 'parliamentarisation' of the Union's decision-making system presupposes increased transparency of the work of the Council and that the involvement of both the European and national parliaments constitutes the basis for a European system with democratic legitimacy and that only regional, national and European institutions which possess democratic legitimacy can take accountable legislative decisions;
9. Considers that Parliament cannot accept the move to reduce the legislative powers and the participation in the legislative process of the one institution to be directly elected by European citizens; enhancing communication between citizens and the institutions of the Union necessarily entails strengthening Parliament's legislative powers, giving more time in which to use them and extending the realm of Community legislation in order to achieve effective harmonisation of the diverse range of national legal systems;
10. Therefore attaches particular importance to the following considerations of principle being taken into account in the further debate on governance:
 - (a) governance by the Union institutions requires democratic legitimacy; this is provided jointly by the European Parliament and the parliaments of the Member States, the latter as the bodies exercising democratic scrutiny over governments acting in the Council;
 - (b) democratic legitimacy presupposes that the political will underpinning decisions is arrived at through parliamentary deliberation ; this is a substantive

and not merely a formal requirement; there is also an urgent need for democratic legitimacy and scrutiny when implementing rules are adopted by the executive;

- (c) legitimacy is understood to mean that political decisions must be underpinned by a fundamental consensus, such as that expressed in the Charter of Fundamental Rights recognised by the European Union - in the sense of a list of individual rights and an objective value system;
- (d) legitimacy in this sense is ultimately inconceivable without clear attribution of political responsibility and cannot be replaced by 'technical' factors such as 'effectiveness' or 'coherence'

Participation and consultation

11. Points out, on the basis of these considerations, with regard to participation and consultation that

- (a) in terms of the criteria referred to in paragraphs 8 and 10 above, 'organised civil society' as 'the sum of all organisational structures whose members have objectives and responsibilities that are of general interest and who also act as mediators between the public authorities and citizens'⁵⁶, whilst important, are inevitably sectoral and cannot be regarded as having its own democratic legitimacy⁵⁷, given that representatives are not elected by the people and therefore cannot be voted out by the people,
- (b) consultation of interested parties with the aim of improving draft legislation can only ever supplement and can never replace the procedures and decisions of legislative bodies which possess democratic legitimacy; only the Council and Parliament, as co-legislators, can take responsible decisions in the context of legislative procedures, due account being taken of the opinions of the bodies specified in the Treaties, i.e. in particular the Economic and Social Committee and the Committee of the Regions,
- (c) an important mouthpiece for civil society is, by definition and in accordance with its newly formulated role under Article 257 as amended by the Treaty of Nice, the Economic and Social Committee, which has advisory status and which, as the law stands, may also be consulted by the Council and Commission 'in all cases in which they consider it is appropriate'⁵⁸; early consultation of the ESC by the Commission can be seen as a way of increasing participatory democracy at Union level^{59, 60}

⁵⁶ Opinion of the Economic and Social Committee on the role and contribution of civil society organisations in the building of Europe, 22.9.1999, paragraph 7.1, OJ C 329, 17. 11. 1999, p. 339.

⁵⁷ See also paragraph 30 of Parliament's resolution of 26.10.2000 (see 7th citation Wuermeling report).

⁵⁸ Article 262 of the EC Treaty.

⁵⁹ Opinion of the Economic and Social Committee of 25.4.2001, points 4.1, 4.2.1, 4.6 and 5.5 'Proposals and guidelines', Proposals 1 and 2.

⁶⁰ See also paragraphs 28 and 37 of Parliament's resolution of 10.12.1996 (see 5th citation 'Herzog report').

- (d) it would not be consistent with good governance for the Commission to set up groups of experts and delegate to them tasks which could better be carried out by the Economic and Social Committee in that it is independent of the Commission⁶¹,
 - (e) however indispensable it may be to consult relevant groups and experts when drafting legislative proposals in particular, it should not be allowed to add a further level of bureaucracy, for instance in the form of 'accredited organisations' or 'organisations with partnership agreements',
 - (f) in conjunction with the ESC, the Commission must find organisational structures so that a procedure for consulting interested parties can be conducted in a meaningful and efficient manner; all ongoing consultations should be listed in a register that is accessible via the Internet;
12. Proposes, following on from the suggestions made by the Commission and the Economic and Social Committee⁶², that an interinstitutional agreement on democratic consultation be concluded committing all three institutions to commonly agreed consultation standards and practices at Union level; points out, however, with regard to the independent role of many non-governmental organisations, that the creation of consultation standards must not be tied to any quid pro quo on the part of organisations of civil society because independent and critical public opinion is essential for a vibrant democracy; confirms, however, that the democratic requirements placed on the Community regulatory process as regards accountability and transparency must also apply to these organisations;
 13. Points out that access to legislation is an important part of effective participation and consultation, so that legislation must be both consistent and clear, access thereto must be practical, and there must be better understanding of laws by those concerned;
 14. Takes the view that this requires effective publicity and the best possible forms of communication, direct (to members of the public) and indirect (via the press), in order to arouse interest and win the public's support for measures to be taken;
 15. Emphasises the opportunity which new technologies present as regards meeting new challenges concerning communication, consultation and the direct participation of civil society;

Autonomous regulatory authorities

16. Takes the view, based on the principles set out in paragraphs 8 and 10, that the

⁶¹ A preliminary draft opinion of the Governance subcommittee of the Economic and Social Committee quotes the example of the Group for Industrial Policy which is responsible for the competitiveness of industry and is made up of 30 members from the Member States and 40 from the Commission, which leads to vast additional costs. (Document CES 95/2001, 22.2.2001, 4.2.2).

⁶² White Paper 3.1 'What is needed is a reinforced culture of consultation and dialogue; a culture which is adopted by all European Institutions and which associates particularly the European Parliament in the consultative process, given its role in representing the citizen' and ESC opinion of 25.4.2001, 3.5, 3.5.1.

creation of further independent regulatory authorities in addition to the Office for Harmonisation in the Internal Market in Alicante, the Community Plant Variety Office in Angers and the European Agency for the Evaluation of Medicinal Products in London within the framework described in the White Paper⁶³ can be approved if specific scientific or technical expertise is required and a decentralised administration seems appropriate; however, this must not lead to a reduction in expert and judicial scrutiny by the Commission or to any watering down of the Commission's political accountability;

17. Points out, however, that the Commission must always have the necessary instruments to enable it to account to Parliament and the Council for the activities of such authorities and it goes without saying that authorities of this kind can be created only on a clear legal basis;
18. Remains committed to the principle of autonomous enforcement of Community law by national governments and regions, because this leads to a transparent division of tasks, clear accountability and implementation of EU law that is close to the citizen; insists, however, on effective monitoring of compliance with obligations under European law, e.g. by means of Treaty infringement procedures;
19. Points out that the right of codecision and political scrutiny by the European Parliament and the Council would become more difficult if EU administrative powers were increasingly delegated to European agencies with decision-making powers; moreover, increasing fragmentation of the 'EU executive' would make the Union less transparent for its citizens; administrative powers must therefore be 'delegated' to agencies only in the case of decisions of a purely technical nature which have no political dimension, scientific support or subject matter that is highly specialised and subject to very detailed regulation;

Openness and transparency

20. Takes the view that increased transparency and openness on the part of the Council as legislator is a sine qua non for good governance and that keeping interested parties informed of the Council's legislative work is the basic precondition for improving understanding and increasing participation on the part of the general public;
21. Stresses once again in this connection the need for the Council to hold its meetings in public when acting in a legislative capacity; in such cases, debates and votes must be made public; pursuant to the Council's Rules of Procedure, public debates must take place at the start and at the end of all legislative procedures, and the results of votes and explanations of votes by Members of the Council must be published;

⁶³ White Paper 3.2.

22. Regrets that the White Paper makes no reference to the institution of the petition to the European Parliament and complaints to the European Ombudsman, particularly given that the Commission makes a much appreciated and frequently decisive contribution to the processing of petitions in the interest of the European citizen;
23. Regrets that although the White Paper mainly deals with matters falling under good administration, the Commission has not been able to take a position on the European Parliament's and the European Ombudsman's initiative on good administration;
24. Finds it deplorable that the draft code of good administration does not serve as a point of departure when the Commission elaborates concrete actions to follow the White Paper;
25. Regrets that the Commission does not mention the new regulations on access to documents in the White Paper, since it is evident that proper implementation of these rules and the allocation of adequate resources to that end are of paramount importance for the achievement of good governance in the EU;

Involvement of regional and local authorities

26. Points out furthermore that, on the basis of the considerations set out in paragraphs 8 and 10 above, that there is no question of the direct delegation of powers and tasks to bodies or authorities at regional or local level in the Member States as this would undermine the basic structure of the Union and be in breach of the principles of subsidiarity and proportionality which leaves it up to Member States to decide how to organise themselves internally;
27. Considers that greater involvement of the regional and local authorities in Union policy⁶⁴ should rather be achieved by enlisting expertise and experience at regional and local level in the Member States at an early stage in the preparation of legislation, there being nothing to prevent the Commission from asking the Committee of the Regions, as a forum for the regions and local authorities, for appropriate surveys and opinions at an early stage, in particular with respect to the anticipated follow-up costs of legislative proposals at the relevant level⁶⁵;
28. Is also of the opinion that the development of a dialogue with associations of municipalities should result in municipalities and local authorities being consulted on all Commission plans that affect their interests;

Better lawmaking

29. Points out that an intensive exchange of views has been going on between the Union institutions on this subject for years⁶⁶;

⁶⁴ White Paper 3.1.

⁶⁵ See study commissioned by Parliament on regulatory impact analysis (RIA) and the report on grassroots representation adopted by the Committee of the Regions on 20.9.2000 (CdR 436/2000).

⁶⁶ Recent examples include: European Parliament resolution of 4.9.2001 on the Commission's 17th annual report on monitoring the application of Community law (1999) (COM(2000) 92),

30. Considers that the drafting of an 'action plan for better regulation' by a Council working party (Mandelkern group on better regulation) and, at the same time, by a Commission working party with a similar brief, represents a serious breach of the Community method, for Parliament, as co-legislator, was neither informed of, nor involved in, the work of these working parties;
31. Calls on the European Council not to adopt the 'Action Plan for Better Regulation' without first consulting the European Parliament;
32. Recalls that, on 2 October 2001, Commission President Prodi assured the European Parliament that the Commission would not present such a plan either to the Laeken European Council or at any other time, without first obtaining Parliament's opinion; calls on the Commission, therefore, not to submit an 'action plan for better regulation', or any other document with the same content but under a different name, to the Laeken European Council before Parliament, as co-legislator, has delivered an opinion;
33. Considers that there are currently no interinstitutional agreements on co-regulation which guarantee Parliament effective exercise of its political role and responsibility, either with regard to the appropriate choice of a legal instrument (while respecting the Commission's right of initiative), or with regard to the form and implementation of a proposed co-regulation;
34. Believes that the use of so-called 'framework' directives must be accompanied by adequate mechanisms of democratic control; in particular, Parliament must in future dispose of a time-limited 'call-back mechanism' for legislation which is delegated;
35. Points out that these methods require further examination and consideration in Parliament and should be regulated by an interinstitutional agreement; if the Commission assumes that co-regulation 'should not be used in situations where rules need to apply in a uniform way in every Member State' then its scope of application is unlikely to be very wide; in no circumstances however should it be allowed to result in a situation in which targets for industry for the purposes of environmental protection are fixed in a way that circumvents Parliament and merely approved by the Council under agreements between the Commission and trade associations which are neither 'representative' nor 'accountable';
36. Has fewer reservations about the open method of coordination if it is confined to the exchange of procedures that have proved their worth and the comparison of progress achieved and does not apply in the sphere of preparation of European Council meetings from which Parliament is excluded; it must under no

European Parliament resolution of 3.7.2001 on a draft interinstitutional agreement on a more structured use of the recasting technique for legal acts (2037/1/2000REV1 – C5-0588/2000 – 2000/2266(ACI)), European Parliament resolution on the communication from the Commission to the Council and the European Parliament on a review of SLIM: Simpler Legislation for the Internal Market (COM(2000) 104), and European Parliament resolution of 26.10.2000 on the Commission reports to the European Council: Better lawmaking - A shared responsibility (1998) (COM(1998) 815) and Better lawmaking 1999 (COM(1999) 562).

circumstances lead to hidden parallel legislation by circumventing the legislative procedures established in the EC Treaty;

37. Points out that better law-making must become part of public administration 'culture' at all levels in the European Union, and must also encompass the implementation of laws and rules by Member State authorities; this will require effective and appropriate information and training of officials, both at European level and at national, regional and local levels, in order to guarantee decentralised administration and 'Europe-friendly conduct' at all levels;
38. Considers that any amendment to Community legislative provisions relating to the institutional and legal aspects of governance must be made by means of amending the Treaties in force and hence be placed on the agenda for the next Convention;
39. Calls on the Commission, in order to '*give priority to consideration of any infringements of Community law*' – as it has expressed the intention of doing – not to hesitate to initiate measures possibly leading to proceedings for non-compliance before the Court of Justice of the European Community against Member States under Article 226 of the Treaty;
40. Urges the Commission to intensify its efforts to complete its own administrative reform so as to establish a first-class, open and transparent public administration, without which it will be impossible to aspire to being the principal executive in a well-managed and accountable Union;

Cooperation with the European Parliament

41. Expects the Commission to intensify cooperation in particular with Members of the European Parliament and to support them in what is the most fundamental of their tasks, in maintaining a dialogue with the citizens, the relevant Commission departments making available all the information needed for this purpose, e.g. on progress with administrative procedures and upcoming deadlines, and in particular providing full and detailed information upon request; **Enlargement**
42. Notes that the political dimension of enlargement is scarcely mentioned in the White Paper despite the fact that in its opinion on the convening of the last Intergovernmental Conference the Commission rightly pointed out that 'enlargement requires changes in the way in which the institutions operate to ensure their effectiveness in a Union whose membership is set to double'⁶⁷; against the background of enlargement, the question of the costs of the reforms to involve citizens and civil society proposed by the Commission also takes on a completely different light⁶⁸;

Convention and Intergovernmental Conference

43. Points out that it will examine the topics dealt with in the last chapter of the White

⁶⁷ Adapting the institutions to make a success of enlargement, 26.1.2000, (2000) 34, p. 6.

⁶⁸ See, with respect to Parliament, the report adopted by the Bureau on 3 September 2001 'Preparing for the Parliament of the enlarged European Union', PE 305.269/BUR/fin..

Paper ('Debate on the future of Europe') on the basis of separate reports drawn up by the committees responsible and, consequently, these topics will not be discussed in this motion for a resolution in order to avoid overlapping and repetition;

Specific measures proposed by the Commission

44. Intends to examine carefully as soon as they are submitted to it the numerous individual proposals and measures announced in the White Paper, such as:

- guidelines on collection and use of expert advice⁶⁹,
- priority attached to treatment of possible breaches of Community law⁷⁰,
- criteria for the creation of new regulatory agencies⁷¹,
- defining minimum standards for consultation and publishing them in a code of conduct⁷²,
- developing an approach to working with key networks⁷³,
- programme to review and simplify Community legislation adopted before 2000, supported by fast track procedures⁷⁴,
- codifying the current administrative rules concerning the handling of complaints⁷⁵,
- examining how the framework for trans-national co-operation of regional or local actors could be better supported at EU level⁷⁶,
- proposing twinning arrangements between national administrations⁷⁷,
- a review of the Union's international representation⁷⁸;

45. Instructs its President forward this resolution to the Commission, the Council, the Economic and Social Committee, the Committee of the Regions and the governments and parliaments of the Member States.

⁶⁹ White Paper 3.2.

⁷⁰ White Paper 3.2 (Box).

⁷¹ White Paper, Proposals for change.

⁷² White Paper 3.1, Action Points.

⁷³ White Paper 3.1 Action Points.

⁷⁴ White Paper 3.2 Action Points.

⁷⁵ White Paper 3.2 Action Points.

⁷⁶ White Paper 3.1 Action Points.

⁷⁷ White Paper 3.2 Action Points.

⁷⁸ White Paper 3.3 Action Points.

ANNEX III
**REPORT ON THE GOVERNANCE OF THE EUROPEAN
UNION AND THE FUTURE OF EUROPE: WHAT ROLE FOR
SCOTLAND?**

EUROPEAN COMMITTEE 9TH REPORT 2001

SCOTTISH EXECUTIVE RESPONSE

Introduction

The Executive considers Governance and the Future of Europe debate to be two related issues of great significant to the EU and all its citizens. It is therefore very important that Scotland is seen to be contributing to the deliberation and debate on these issues. Accordingly the Executive very much welcomes a contribution from the European Committee and has read with interest the proposals contained in the Committee's extensive report.

The attached annex is the Scottish Executive's response to the European Committee's 9th Report. A significant number of the conclusions and recommendations contained in the report are clearly directed at organisations other than the Scottish Executive. In the case of these, the Executive has noted with interest the Committee's views and has, where appropriate, commented on its own position in regard to the aspects discussed. The Executive's policy position on the Future of Europe debate is based on 5 principles. We are:

Pro-European because we have no doubts about the significance of the EU to Scotland;

Pro-UK because we recognise the fundamental importance of the building blocks represented by Member States not least because in this country that allows decisions to be made in the right place and gives us power beyond that otherwise available to a small nation;

Pro-Reform because we are in no doubt that change is needed to give a greater democratic legitimacy to decision making;

Pro-Regional involvement because we believe that sub-Member State administrations can play a vital role in restoring the democratic equilibrium;
and

Pro-Debate because we are convinced that openness is the best route to generate effective solutions and to bring the citizens of Europe on board.

We note also the recommendations the Committee has made on the handling of EU business in Scotland, many of which are more specifically aimed at the Executive. Many of these recommendations stem from the Committee's legitimate desire to scrutinise and contribute to the representations Scottish Ministers are making to the UK Government, as the UK line on a particular EC proposal is developed. As the Committee recognises, there are significant issues of confidentiality which have to be faced - in that, both the detail of the UK negotiating line on a particular proposal, and the substance of discussions between the Executive and the UK Government, are not normally made public. We believe, however, that there is scope to increase the Committee's capacity to engage constructively in these matters, while respecting the principles of confidentiality; and we therefore suggest that discussions are set in motion to develop and agree arrangements to achieve this. These arrangements should also deal with the Committee's previously expressed interest in the processes for reporting to Committee around meetings of the EU Council of Ministers, to which the Executive has already responded positively.

In addition to responding to the conclusions and recommendations, the Executive wishes to comment on the reference in Case Study 4 of the report to a low response rate to a consultation exercise on the traceability and labelling of GMOs and on GM food and feed. The Food Standards Agency has advised that the response rate of 7% is a good response to a consultation of this size. Finally, the Executive has also noted the Parliament's intention at paragraph 248 to conduct an inquiry into Scotland's "representation" in Brussels.

References

The reference number shown against each of the recommendations is the relevant paragraph number in which it appears within the "Conclusions and Recommendations" section of the report. Each recommendation is followed by the Executive's response/comments which are shown in bold. The acronym JSG is used throughout the response to refer to the joint Scottish Executive/CoSLA submission on Governance presented to the Commission in March 2000.

Guiding principles

203. We recommend that the 2004 inter-governmental conference (IGC) must grasp the nettle and take the necessary decisions to open up and make more effective Europe's decision-making process.

While we feel that at this stage of the debate recommendations about what Member States should decide at the IGC in 2004 are somewhat premature, the Executive very much supports an outcome which will result in a more transparent and efficient EU.

205. We recommend that serious efforts are made to open up the debates and, in the case of the UK, we endorse the view that there should be in due course a White Paper on the IGC. We recommend also that the Scottish Executive organise and resource a series of open fora, public meetings or conferences on the issues during the time of the preparatory work for the IGC.

The Executive notes the Parliament's support for a proposal that the UK Government produces a White Paper on the IGC.

The Scottish Executive itself has contributed to the debate via evidence (JSG¹) given by Jack McConnell in Brussels in March 2000 and has already participated in a panel discussion involving Commissioner Kinnock in February of 2001; a Conference on the Future of Europe organised by the Jean Monet Centre of Excellence in association with the Royal Society of Edinburgh in September 2001; and made Future of Europe issues the centrepiece of Scotland Week in October of last year.

The reality of the situation is that although the outline of the process for the Future of Europe debate in the build up to the 2004 IGC was set out in the Laeken declaration, the Convention is still in the process of being set up. Its method of working and the sequence and means by which the fundamental issues will be tackled are still unclear. Once we have a clearer picture of how matters are developing. We shall continue to champion an open and wideranging debate on the subject and to co-ordinate our efforts in Scotland with those of the UK Government in this regard. In considering future opportunities we shall take account of the Committee's suggestion that attempts should be made to widen the choice of location and range of participants.

The JSG¹ addressed the question of drawing in other views.

¹ JSG – The joint Scottish Executive/CoSLA submission on Governance presented by Mr McConnell to the Commission at an evidence gathering session in Brussels in Brussels in March 2000.

¹ JSG – The joint Scottish Executive/CoSLA submission on Governance presented by Mr McConnell to the Commission at an evidence gathering session in Brussels in Brussels in March 2000.

Simplification of the Treaties and Division of Competences

208. We recommend (the Treaties) they are simplified and rationalised as part of the preparatory work for the IGC.

As the Committee recognises, the question of simplifying the existing Treaties has already been identified at both the Nice Summit and in the text of the Laeken declaration as one of the major issues to be explored. The Executive is in favour of simplification but it shares the Committee's view it is important that the process of simplification in itself is not used to change the existing meaning and extent of the powers contained.

Much of this debate ignores fact that the problems the EU is trying to tackle (such as social exclusion, unemployment and environmental issues) cannot be solved by one tier of government alone.

209. We would recommend that serious consideration is made to the creation of "partners of the Union status" for bodies such as the Scottish Parliament. Such status should include the right to establish direct contacts with the Commission, privileged access to the European Commission as regards consultation on new legislation, possibly a right of wider access to the European Courts and possibly even the right to cross border co-operation with other territorial authorities in a neighbouring Member State.

The Executive notes the Committee's recommendation which is clearly directed at the EU. The Executive favours greater access to the Commission in certain circumstances such as through consultation at an early pre-legislative stage of its proposals.

It is not clear in what circumstances the Committee envisages the Parliament having access to the European Courts: if what the Committee has in mind is the issue of policing the proper application of the subsidiarity principle, the Executive favours a political rather than a judicial means of redress.

As regards the Parliament's right to cross-border co-operation, the Executive's understanding is that the Parliament is already involved in such activity, for example the links the Parliament is developing with the Parliaments of Flanders and Catalonia.

A question of subsidiarity

210. We recommend that the IGC considers what systems might be necessary to enforce the subsidiarity concept, including the merits of a subsidiarity panel or the supreme court route.

The Executive proposed in the JSG¹ (page 13) that there needs to be some form of subsidiarity watchdog whose remit is to ensure the proper application of the subsidiarity principle within the EU decision making process. The Executive's view is that a political mechanism which could deal with breaches of the principle before legislation was promulgated would be a more speedy and effective solution than retrospective judicial action.

A new relationship with the European Commission

212. We recommend that the Commission is more open as regards the processes used to define its annual work programme.

The Executive has made clear on numerous occasions that it would like to see a more transparent and efficient EU and one which took measures to reduce the gap that has developed between it and ordinary European citizens. We agree that a clear statement of EU aims and objectives at periodic intervals would better enable ordinary citizens to understand the EU's vision of the future and the direction in which Europe is heading and the purpose of its legislative measures.

The Executive welcomes the move by the European Commission to adopt a series of long term thematic strategies on which legislative proposals are then based. For example the approach adopted to address employment, social policy and sustainable development.

213. We recommend that the Commission refines its ideas for 'partnership agreements' with the constitutional regions/nations. We recommend that a vital component of such agreements must be for these countries or regions to have privileged access to the Commission for pre-legislative consultation.

The JSG¹ (page 16) proposed that the Scottish Executive as an administration with legislative power should be consulted at the pre-legislative, stage and that the Commission should do so on the basis of a Code of practice on consultation. We were pleased to note that this proposal was adopted in the Commission's Governance White Paper.

¹ JSG – The joint Scottish Executive/CoSLA submission on Governance presented by Mr McConnell to the Commission at an evidence gathering session in Brussels in Brussels in March 2000.

The Executive is currently working through a range of representative bodies to champion an approach that secures an EU which is closer to EU citizens, including the Partners Group of Regions with legislative power, the Council of Europe Congress of Local and Regional Authorities of Europe and the Constitutional Affairs Commission of the Committee of the Regions.

214. We recommend that the Scottish Executive gives very serious consideration to Scotland being selected for such pilots and reviews.

The Executive welcomes the Commission's proposal to conduct pilot projects relating to the more flexible implementation of EU policies and is considering the Commission's open invitation for implementing authorities to participate in such projects.

Reforming existing structures

217. We recommend that as an alternative approach to the creation of new institutions that efforts are made to redress the problem of a lack of engagement by national citizens with European issues through greater accountability of the decision-makers to their national and regional parliaments.

The Executive recognises that both sub-Member State administrations and Parliaments have a role to play in redressing the democratic deficit but we feel that bridging the gap with ordinary citizens and the more effective and transparent operation of the EU also require changes to the decision-making process itself and its means of implementation as is documented in the JSG_.

219. We recommend that these options (subsidiarity watchdog/panel) be at least considered, although we do not see any overwhelming need for their creation. We do, however, consider the supreme court model, to adjudicate on subsidiarity issues, as an idea worth considering.

The fact that a review of competences is one of the 4 main themes to be examined by the Convention is a clear indication that a number of Member States, not to mention sub-Member State governments, take the view that the application of the subsidiarity principle is not working as well as it might. It is because of this present acknowledged failing that the Executive considers it desirable to have some form of policing of the principle. The Executive's

preference is for a political rather than a judicial resolution of breaches of the principle (see our response to Recommendation 228).

We take the view that the proper application of the subsidiarity principle would realise Principles 3 and 5 of the JSG¹ which are noted below.

Decisions should be taken at the lowest level (ie closest to the citizen) consistent with effectiveness.

A greater sense of participation can only be achieved if there is wider consultation of all those affected by proposed legislation before final versions are drafted by the Commission.

221. We would also endorse and recommend the calls made by some for better standards for information flow between the EU institutions and national/sub-national parliaments and their scrutiny committees.

The Executive supports in principle measures designed to make the EU more efficient and more transparent. Better and faster information flows at various stages in the decision making process can only assist in achieving these goals. We welcome the Commission's "Framework for EU Information and Communications Policy" published in June 2001 and look forward to a further Communication.

222. We recommend consideration is given to regional/sub-national participation, at least as observers, to the COSAC network of national "European Committees".

The Executive notes the Committee's recommendation but has no comment to offer.

On the European Council of the EU

223. We endorse the calls made by many, including the UK's Europe Minister and senior MEPs, and recommend that the Council meets in public when in its legislative role.

The Executive is in favour of a more transparent EU and in the JSG_ (page 18) we proposed that the legislative process (from Commission to European

¹ JSG – The joint Scottish Executive/CoSLA submission on Governance presented by Mr McConnell to the Commission at an evidence gathering session in Brussels in Brussels in March 2000.

Parliament and Council) should be more transparent to enable interested bodies to know how draft legislation is being modified.

Principles 7, 8 and 9 of the JSG¹ are relevant here and are noted below.

The EU institutions should take better account of the potential financial impact of legislation on the implementing authorities and other concerned parties (whether private or public).

Those involved in the attainment of targets should be involved in setting them.

The Commission and implementing authorities should aim for a consensual approach whereby the Commission assists in achieving the objectives of a policy rather than simply resorting to infraction proceedings if there appears to be a problem.

224. We recommend the General Affairs Council should meet more regularly, it should take its legislative deliberations and votes in public, that such votes should be taken only by ministers and that it should be better managed.

The Executive notes the Committee's recommendation. Aside from our comment above in response to paragraph 223 about supporting greater transparency, the Executive has no further comment to offer.

225. We recommend also that consideration be given to the creation of a 'Regional Affairs Council' involving ministers from the various constitutional regions with legislative powers (where they exist in each Member State) and for the Committee of the Regions to enjoy observer status in relevant Council of the EU meetings.

The Executive notes the Committee's recommendation. It has no further comment to offer on the specific suggestion for a Regional Affairs Council except to say that, in principle, it supports a greater involvement of sub-Member State legislative administrations in the EU decision-making process. Turning to the proposal for observer status for the Committee of the Regions (CoR), the Executive in supporting the Liege Resolution took the view that its current shape and institutional framework did not allow the CoR to meet the needs and expectations of all the sub-Member State entities it should represent. The Resolution went on to argue for a reinforced role within the decision making process. The Executive at this stage in the debate has not reached a view on how this should be achieved and therefore has no further comment to offer on the committee's specific proposal.

¹ JSG – The joint Scottish Executive/CoSLA submission on Governance presented by Mr McConnell to the Commission at an evidence gathering session in Brussels in Brussels in March 2000.

226. We recommend that the process whereby committees of national experts embellish EU legislation behind closed doors and without a general understanding of what is going on (comitology) be reformed and that it should be subject to greater scrutiny.

As stated in our response to the recommendation at paragraph 223, the JSG_ proposes that the legislative process should be made more transparent, recognising that final texts seldom reflect the spirit of the original proposal.

Access to the Courts

228. We recommend that the IGC takes active measures to redress the mismatch in the powers versus avenues of redress. This should involve giving such regions/nations ‘privileged’ or ‘semi-privileged’ status in terms of access to the European Court of Justice.

The Executive’s proposals in the JSG¹ relating to the policing of subsidiarity envisage intervention at an early stage rather than after the event. Our view is that the introduction of a body charged with ensuring the proper application of subsidiarity which could act prior to the completion of the legislative process would largely obviate the need for retrospective legal action which is currently a very slow process because the European Court of Justice is already overburdened. Questions of subsidiarity are mainly political and policy matters and should therefore more appropriately be dealt with by politicians than judges

A blue sky approach

231. As stated above, we recommend that an additional question be added to the 4 currently expressed as the basis of the terms of reference for the preparatory work in advance of the 2004 IGC.

¹ JSG – The joint Scottish Executive/CoSLA submission on Governance presented by Mr McConnell to the Commission at an evidence gathering session in Brussels in Brussels in March 2000.

The Executive thinks it essential that the Convention considers the role and setting of sub-Member State governments with legislative powers as an integral part of the 4 main themes identified at Nice and re-iterated at Laeken. It takes the view that such administrations have an important part to play in the decision-making process and the task of redressing the acknowledged democratic deficit which currently exists within the EU.

The Convention model, the 2004 IGC and the role for Scotland

234. We recommend that the lack of regional participation to the EU decision-making process is added as a theme to be addressed by the Declaration of Brussels/Laeken as well as by the forthcoming Inter-Governmental Conference.

The Liege Resolution, which the Executive supported made this very request.

235. We too recommend that the convention be free to consider wider issues, that it should articulate priorities rather than simply state options, that it be free to elect its own president and that it should meet openly and be fully transparent.

Member States have since taken decisions on the composition and remit of the Convention. The Executive welcomes the general thrust of the arrangements for taking the Future of Europe debate forward. As well as suggesting options for the IGC to consider, the Convention can also indicate the relative degree of support for each and can make recommendations where consensus is achieved.

237. We recommend that the Scottish Executive has an early discussion with their UK counterparts to ensure that the UK's representatives on the convention (Ministers and/or parliamentarians) put in place systems to enable the devolved administrations to have their voice heard before meetings of the convention and to receive on-going feedback and convention papers during its deliberations.

Existing good liaison with both the Foreign and Commonwealth Office and Cabinet Office and between the Scottish Executive EU Office and UK Representation in Brussels will enable the Executive to keep up to date with developments at the Convention and to feed Scottish views into the formulation of the UK policy position put forward at Convention meetings. In addition, the Foreign Secretary has agreed that JMC Europe meetings will be held more frequently to discuss significant developments arising from the Convention's work. Information will also become available through Scottish membership of the Constitutional Affairs Commission of the Committee of the Regions. The

Executive will also continue to work collectively with other EU sub-Member State legislative administrations to feed in joint views to the Convention.

Governance in Scotland: principles for a more effective engagement with the EU

241. We recommend that the concordats between the administrations be re-written as part of the reported current review to open up the system or, at the very least, that the interpretation of what should be, and what might not be, kept private should be reviewed.

We believe that the Concordat's provisions on confidentiality remain fundamental to the operation of an effective relationship with the UK Government, and that amending these provisions could only harm the Executive's ability to represent Scottish devolved interests. However, as noted in the introduction to this response, we recognise the Committee's legitimate desire to scrutinise the work of the Executive and to contribute to the Executive's discussions with the UK Government.

Noting the suggestion that the Committee would, for example, welcome a broad indication of subjects currently under discussion between the Executive and the UK Government, we believe that arrangements can be developed which, while respecting the provisions of confidentiality, will provide the Committee with a greater opportunity to contribute to the Executive's discussions with the UK Government on EU matters. We propose to discuss with the Committee and with the UK Government how best this can be achieved. We also re-commit ourselves to developing better arrangements for reporting to Committee around meetings of the EU Council of Ministers.

243. We recommend also that the concordats in this area be revised in two further respects. First, to provide an automatic right to attend Council of the EU meetings when devolved matters are being discussed and decided upon. Second, to spell out more clearly the nature of the information that should be provided by Whitehall to the devolved administrations.

We are entirely satisfied with how the Concordats have operated in terms of Council attendance and provision of information, and do not intend to seek revisions to them in these areas.

Furthermore, we believe that the insertion into the Concordats of an automatic right to attend Council meetings would be neither meaningful nor practicable: because of the non-binding nature of the Concordats, such a right would have no

independent status; and, since such a right would have to be granted to all 3 devolved administrations, practical considerations would mean the UK Government could not guarantee to honour it in all circumstances.

Similarly, where counterparts have felt it useful to agree in more detail what information should be provided, this has been achieved through specific bilateral Concordats, and we do not believe further general revision is necessary or desirable.

244. We would recommend the creation of a ‘Scottish scrutiny reserve’ for governance within Scotland.

We agree that the arrangements developed in response to the recommendation in paragraph 241 should be designed so as ensure that, as far as was practically possible, the Committee would always be able to feed its view into the Executive at a point when it could realistically be reflected in the Executive’s discussions with the UK Government. In other words, we agree that the principle and purpose of a scrutiny reserve should be reflected in the arrangements. However, we do not believe that a formal scrutiny reserve would be a useful or workable feature of those arrangements, though this is a matter which could be revisited once some experience of the operation of these arrangements had been gained.

245. The Committee recommends also that the Executive reaffirms and respects the principle that unless there is a strong argument against, representatives of relevant Scottish institutions should participate in various EU working/advisory groups and expert panels when such bodies are considering issues within the devolved competences.

We agree that participation in such groups is important; however, all decisions on whether or not to participate should be taken on a case-by-case basis, taking into account both the extent to which there are significant and distinctive devolved interests at stake, and the opportunity cost in terms of time and resources

246. We recommend also that the Executive rethinks its EMILE network² (European Members Information Liaison Exchange), which should be re-focused in terms of its objectives and the timing of its meetings.

We agree that the role of EMILE should be reviewed. We agree that meetings should be held 6-monthly, early in each EU Presidency.

² Consisting of the Scottish Executive’s Minister, Members of the European Committee, Scottish MEPs, Members of the Committee of the Regions and Scottish Members of the European Economic and Social Committee.

247. The Committee recommends that the relevant Minister, or the First Minister, considers making an annual ‘state of the (European) Union’ speech to the parliament or the European Committee at the time the European Commission publishes its annual work programme.

We agree with the principle of this recommendation, but instead suggest that such events should be held every 6 months, early in each Presidency, and consist of an appearance by the Deputy First Minister before the European Committee. These occasions would provide an opportunity to look ahead to the main issues likely to arise during the forthcoming Presidency, and for the Minister to update the Committee on the Executive’s priorities in external relations.

249. We fully endorse the links the Scottish Parliament is developing with Flanders and Catalonia and recommend they be taken forward in an inclusive manner so as to involve a cross-representation of views within the Parliament.

The Executive welcomes the Parliament’s initiative to develop links with the Parliaments of Flanders and Catalonia. This is a good example of the practical application of the complementarity at the centre of the Memorandum of Understanding entered into by the Executive and the Parliament.

250. We recommend that both the Scottish Executive and the Scottish Parliamentary Corporate Body reconsider the current levels of staff and financial allocations available for such tasks as support for parliamentary scrutiny of EC/EU legislation, research on European issues, translation and transcription, drafting of Scottish Statutory Instruments and policy and legal advice on EC/EU matters.

The Executive keeps such matters constantly under review.

ANNEX IV

SEMINAR AND WORKSHOP PROGRAMME

Programme of the Seminar on Governance in the European Union and the Commission White Paper

Organised at the EUI by Christian Joerges and Karl-Heinz Ladeur

January-February 2002

In July 2001, the Commission has published its White Paper on Governance in the EU. The effort undertaken by the White Paper to pinpoint institutional reforms and reforms of governance practices is being discussed in academic and governmental quarters all over Europe.

It is the objective of the seminar to take up aspects of the White Paper, which are of long-term significance. Their discussion should be helpful for many research projects pursued at the EUI.

Section I Institutional Frameworks of Regulatory Policies in the EU

(1) *11 January 2002*

Angela Liberatore, Brussels (DG XII)

Organising Expert Advice in the EU: The Report of the Working Group
“Democratising Expertise” (The report is available at
http://europa.eu.int/comm/governance/index_en.htm).

Discussant: Claudio Radelli, EUI/RSC

(2) *18 January 2002* Markus Jachtenfuchs, IU Bremen

Governance – The Rise of the Concept in Political Science

Discussant: Neil Walker

Legal Implications and Constitutional Problems with the Turn to Governance

(3) *25 January 2002 – An American Perspective:*

Jody Freeman, UCLA

The Involvement of Private Actors in the Regulatory Process: An American Perspective

Presentation by Karl-Heinz Ladeur

(4) 1 February 2002

Fredrik Bergstrom, Stockholm//Florence

The White Paper's Critique of Comitology and the Responses in Member States – Insights from a study on the European Committee System for the Swedish Government, (the study is available at <http://www.statskontoret.se/>)

Discussant: Christian Joerges

Section II. New Types of Governance in the EU

(5) 8 February 2002

Giandomenico Majone, Florence

Delegation of Regulatory Powers in a Mixed Polity

Discussant: Christian Joerges

(6) 15 February 2002

Deirdre Curtin, Utrecht

Integrating Civil Society in European Governance

Discussant: Gráinne de Búrca

(7) 22 February 2002

David M. Trubek, Madison, WI/London

The Open Method of Coordination and the European Social Model: How should Europe make policy on Employment and Social Exclusion?

Discussant: Philip Syrpis, JMF

Section III Concluding Workshop

1 March 2002

Programme

Welcome Address: Helen Wallace, Robert Schuman Centre

Panellists:

Xenophon Yataganas, Legal Advisor at the Legal Service of the European Commission, Brussels

Wilhelm Lehmann, European Parliament, International and Constitutional Affairs, Directorate General for Research and Documentation, Strasbourg

Georg Felsheim, “Grundsatzreferat Europapolitik” of the German Foreign Ministry, Berlin

Nora Radcliffe, European Committee of The Scottish Parliament, Edinburgh

Discussion with an Opening Statement by **Jacques Ziller**, Head of the Law Department

Conclusions by **Karl-Heinz Ladeur**, EUI, Department of Law

We also refer to the Governance Symposium web sites at

<http://www.iue.it/RSC/Governance/>

<http://www.jeanmonnetprogram.org/papers/01/010601.html>

as well as to the web site of the European Commission, **Enhancing democracy: A White Paper on Governance in the European Union** at

http://www.europa.eu.int/comm/governance/index_en.htm

For an elaboration of the views expressed during the workshop, we would like to draw your attention to the following papers:

- Wilhelm Lehmann, *Governance in a Union of up to 30 Member States*, European Parliament Working Paper, Constitutional Affairs Series, AFCO 101 EN, 2-2002.
- Xénophon A. Yataganas, *The Treaty of Nice: The Sharing of Power and the Institutional Balance in the European Union-A Continental Perspective*, Jean Monnet Paper No.1/01, <http://www.jeanmonnetprogram.org/papers/01/010101.html>
- Xénophon A. Yataganas, *Delegation of Regulatory Authority in the European Union The Relevance of the American Model*, Jean Monnet Paper No.3/01, <http://www.jeanmonnetprogram.org/papers/01/010301.html>

The whole report of the Scottish Parliament can be found at http://www.scottish.parliament.uk/official_report/cttee/europe-01/eur01-09-vol01-01.htm.