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Neither Breathtaking nor Pathbreaking: The European Commission's White Paper on Governance

Introduction

Many authors' have reflected on European governance and its problems. Given that the European Commission has a dual function of a European executive at the heart of the European Union (EU) (Nugent 1997) and of the promoter of new ideas and concepts, it is unsurprising that the Commission recently contributed to the intense academic and political debate over this problem. The President of the European Commission Romano Prodi (2000) announced at the outset of his new 2000-2005 Commission that promoting new forms of European governance was one of the key strategic objectives. Obviously, in the context of the scandals of the previous Commission (Peterson 1999), this goal-setting was motivated by, and was a necessary reaction to, growing concerns for the legitimacy of the EU framework of governance. Besides Commissioner Kinnock's institutional reform programme, which is concentrated on the Commission's internal problems with fraud and mismanagement (Commission 2000), the provisional result of these broader inter-institutional reflections on governance is the publication of the White Paper.

Unfortunately, for many reasons the White Paper's contribution to understanding and to closing the legitimacy gap of European governance is not very helpful. In this article, the author tries to figure out the shortcomings and negative implications of the many proposals the Commission has made on the subject. It can be demonstrated that the Commission's good intentions of reinforcing its role in European policy-making, in both preparing and implementing policy actions, could do serious damage to the EU's fragile institutional set-up. Moreover, it is likely that adopting its governance proposals could in fact lead to an even deeper legitimacy crisis in the future than the EU is already suffering today.

The argument will be developed in three steps. First, an overview of the multifarious aspects of European governance and its legitimacy problems in the shadow of the imminent enlargement will be provided. Against this background, it will become easier to evaluate the usefulness of the Commission's proposals culminat-

ing in the advice to 'revitalise the Community method' (Commission 2001: 29). Secondly, the Commission's governance approach, its perception of problems and its proposed solutions will be discussed. In the third step, some analytical shortcomings and hitherto overlooked negative implications of the Commission's proposals will be highlighted.

The Main Challenge of European Governance: A Multi-Dimensional Legitimacy Problem

The EU's political system is difficult to explore and explain (Risse-Kappen 1996). Its varying modes of governance and complex mixture of different policy-making styles, instruments and institutions prevent any clear definition of the EU as a classical international organisation or a kind of federal state. To a far greater extent than ordinary international organisations, it has evolved from a horizontal system of inter-state co-operation into a vertical and multi-layered policy-making body without becoming the kind of federal state with which we are familiar. With the intention of expressing that the EU is something "in-between", Wallace (1983) emphasised the already advanced yet incomplete character of its governance structure by categorising it as more than a regime but less than a federation. In this ongoing debate (Jachtenfuchs 2000; Hix 1998), academics often speak of a totally unique system, a political system *sui generis*. In order to highlight the main characteristics of the EU's governance it is useful to identify its main sources of legitimacy. In doing so, the multi-dimensional legitimacy problem becomes obvious. The critical question then is whether the White Paper on European governance is able to meet this

challenge effectively, by giving a useful in-depth analysis and presenting practical proposals to resolve the problems identified.

The EU has developed into a new type of political system that lacks many of the features we usually associate with democratic governance. Admittedly, the White Paper offers a very clear explanation that should clarify that EU governance is nevertheless legitimate: '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' (Commission 2001:7). Yet this explanation is far from sufficient. Whereas in the past the European Community (EC) relied on indirect legitimacy based on its member-states and their complete control of European policy-making (Moravcsik 1999), the uneven denationalisation of European integration indicates that the sovereign state cannot remain the sole focus of normative reflection. Since the Single European Act (SEA) and the Treaty on European Union (TEU), signed in 1986 and 1992, the forced transfer of political decisions and allocations from the national to the European level has weakened national-level democratic influence and control without the compensating establishment of equally strong democratic institutions and processes at the European level. Notwithstanding the fact that its legislative powers were significantly strengthened within the last treaty amendments in Amsterdam (1997) and Nice (2000), the European Parliament still plays only a subordinate role in European policy-making. Although as powerful as the Council in policy fields of the first pillar where the co-decision procedure is applied, the Parliament is often not the location for

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crucial decisions — within the first pillar this is most obviously the case in the field of Common Agricultural Policy (CAP).[2] It might be said that this is a pity as the Parliament is the only directly elected and therefore publicly accountable EU institution. Following a simple logic, therefore, it might be useful to give greater powers to the Parliament in order to strengthen the input-legitimation of European governance. Unfortunately, many valid arguments can be found which speak against this option (Höreth 1999a; 1999b).

But the unique EU governance system also draws its legitimacy from other sources. Traditionally, a very important source of legitimacy is the technocratic and utilitarian justification of European governance, the EU's general efficiency and effectiveness in dealing with political problems. Governance in the Union could be seen as "government for the people" — it is legitimate and even democratic in so far as the output of the political system corresponds fully to the collective preferences of its citizens (Dahl 1999). The EU, after all, enjoys utilitarian support mainly through the economic welfare which it facilitates. Undoubtedly, the success of the European enterprise, and therefore its justification, depends on its ability to achieve tangible results for the participating countries and their populations. As long as the efficiency and effectiveness of European policy-making leads to more noticeable benefits than costs, the utilitarian support of large parts of the European population is unlikely to be questioned. Against this background, the European Commission plays a very important role. Control of the legislative agenda gives the Commission the power to set priorities for the EC for it possesses powers normally reserved for elected institutions. The Commission is also able to produce legislation and supervise its

implementation relatively independently of member-states' interests or popular pressure. In order to fulfil these assignments, an intricate set-up of multi-level administrative interpenetration co-ordinated by the Commission has emerged which is responsible for the often-criticised bureaucratisation of "Brussels" (Wessels 1997:281). The drawback of this institutional arrangement is that the Commission is identified as an opaque technocratic body lacking in democratic accountability and control.

As the direct democratic legitimation of European policy-making is limited, the indirect democratic legitimation of EU politics through the Council of Ministers and the COREPER (*Comité des représentants permanents* — Committee of Permanent Representatives) remains very important. The Council, representing the executive branch in the member-states, continues to enjoy primacy in the EC legislative process. For this reason, governance in the EU is still predominantly the result of the net empowerment of the executives of the member-states without any meaningful parliamentary control at the European level. On the other hand, the democratic and formal legitimacy of the EU still stems indirectly from the member-states as signatories to the European treaties. The constitutionalisation of Europe was approved by the national parliaments of all the member-states. It is indisputably the case that, in a formal sense, the existing structures and processes of European governance rest on the approval of these democratically elected non-European institutions. To the extent that European governance is the result of inter-state bargaining, it is indispensable, therefore, that national governments acting in the European arena are democratically controlled by and held accountable to their national constituencies and parliaments. As the German

Constitutional Court has pointed out, it is first and foremost the national peoples of the member-states who must provide the democratic legitimation for EU governance. In this peculiar federation of states (*Staatenverbund*) formed by the EU, democratic legitimation necessarily comes about through feedback to the actions of European institutions *via* the parliaments of the member-states (Bundesverfassungsgericht 1994). But this view definitely suffers from some serious shortcomings. Supranational institutions obtained more and more power and independence in order to complete the single market project. Together with the growth of majority rather than unanimous voting in the Council, this development leads to a decline of member-states' ability to control every step in European policy-making. Therefore, the state is also a declining source of political legitimation in the European multi-level system (Matláry 1995). Nevertheless, the member-states are the communities to which the collective identities of individuals are still primarily oriented and which possess the social prerequisites for stable democracy. Therefore, the political order at the European level must protect these communities, and the member-states, their ministers as well as their civil servants and experts, should furthermore play a decisive role in the multi-level game of European policy-making.

To sum up, apart from the legitimacy problems defined above and described in ideal-typical terms, governance in the European polity is legitimated by three different sources of legitimacy. These — nevertheless intertwined — sources could be used as the criteria to evaluate the quality of the White Paper's remedies:
- Output legitimacy: efficiency and effectiveness of European problem-solving ability and capability; "government for the people".

- Input legitimacy: direct democratic legitimation of European politics through the elected European Parliament; transparency; citizens' participation and consultation; "government by the people".
- "Borrowed" legitimacy through member-states: indirect democratic legitimation of European politics through intact member-states and their legitimated authorities (member-state governments, national parliaments, civil servants, nominated experts); "government of the people".

The Commission's Approach

Defined Problems

Among problems defined in the White Paper the following are most important:
- Despite the European Commission's view that integration is a great success many Europeans feel alienated (Commission 2001:7) from the EU's work: 'Many people are losing confidence in a poorly understood and complex system to deliver the policies that they want' (Commission 2001:3). The falling turnout rate during elections for the European Parliament reflects a perception of European policy as being either ineffective or excessively detailed and intrusive (Commission 2001:7).
- The relatively weak legitimacy of European policy-making is mainly a result of manifold credit claiming and scapegoating. In the words of the White Paper: 'Where the Union does act effectively, it rarely gets proper credit for its action' (Commission 2001:29). On the other side, it is also a perceived problem that 'Brussels is too easily blamed by Member States for difficult decisions that they themselves have agreed or even requested' (Commission 2001:29).
- The less the European institutions are willing to concentrate on their core tasks,

the more the successful Community method is in serious danger: 'One of the biggest sources of concern is the tendency of Member States when implementing EC directives to add new costly procedures or to make legislation more complex' (Commission 2001:23). This is the result of 'the reluctance of Council and European Parliament to leave more room for policy execution to the Commission' (Commission 2001:18). Therefore, 'legislation often includes an unnecessary level of detail' (Commission 2001:18).

Proposed Solutions

Apart from the programmatic yet somewhat unsystematic declaration of the 'principles of good governance' (namely openness, participation, accountability, effectiveness and coherence) that are 'important for establishing more democratic governance' and 'apply to all levels of government' (Commission 2001:10), regarding the above defined problems of European governance, changes required to the existing practices are as follows:

- In order to relieve the legislative tasks of the Council and Parliament these institutions should limit their involvement in primary European legislation to the definition of essential elements (Commission 2001:31). They should therefore 'leave the executive ... to fill in the technical detail via implementing "secondary" rules' (Commission 2001:20) without being bothered by national representatives in management or regulatory "Comitology" procedures (Commission 2001:31). These remedies would lead to more efficient decision-making and more effective legislation and implementation.

- In these circumstances the Commission could promote more openness and transparency by providing more information about all stages of European decision-making. Moreover, the participation of

civil society should be enhanced in order to 'connect Europe with its citizen' (Commission 2001:3). The practical proposals made are to offer more 'online information on preparation of policy through all stages of decision-making' (Commission 2001:4), 'stronger interaction with regional and local governments and civil society' (Commission 2001:4), 'more systematic dialogue with representatives of regional and local governments (Commission 2001:13), 'greater flexibility into how Community legislation can be implemented' and the establishment of partnership arrangements (Commission 2001:4). In the words of the White Paper: 'providing more information and more effective communication are a pre-condition for generating a sense of belonging in Europe' (Commission 2001:11).

Taken together we can identify two main targets of the White Paper's proposals. The first one is to strengthen the democratic character of European policy-making, its input dimension, by providing more participation, transparency and consultation. The second one is to enhance the problem-solving capacity and ability of European governance thereby strengthening the output dimension of the EU's legitimacy. These targets will now be discussed in turn.

The Proposals' Overlooked Negative Implications

Strengthening Democratic Governance by Involving Civil Society Actors?

Participation and civil society are often used keywords in the White Paper. It is clearly the White Paper's intention to strengthen the input dimension of European governance by enhancing the inclusiveness of citizenship (Boyce 1993:459; Bellamy and Warleigh 2001).

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Throughout the whole text, the authors promise more participation and consultation, more communication and the broader involvement of civil society actors. The paper stresses that '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 to create more confidence in the end result and in the institutions which deliver policies' (Commission 2001:10). Against this background, it is not surprising that the stronger involvement of civil society actors in European policy-making (Commission 2001:14) is a declared target of governance reform. This marks a very noticeable shift from output-oriented to input-oriented argumentation within the Commission. Whereas only two years ago the Commission's President Romano Prodi (1999) followed a purely output logic in stressing that 'at the end of the day' citizens are not interested in 'who solves these problems, but the fact that they are being tackled,' the White Paper emphasises that the European governance legitimacy 'depends on involvement and participation' (Commission 2001:11) because 'the Union has moved from a diplomatic to a democratic process' (Commission 2001:30).

But the trouble with this well-meaning statement begins as soon as it comes to the definition of civil society and its organisations. The word civil society alone does not explain or even legitimate anything. Using the rhetoric of civil society the Commission tries to convince the reader of the White Paper that the reform proposals regarding participation and consultation would concern all citizens, but the few more detailed explanations remain relatively obscure. The only qualification given by the White Paper, in the context of the proposed co-regulation with private actors, is that participating civil society organisations 'must be representative, accountable and capable of following open procedures in formulating and applying agreed rules' (Commission 2001:21).

Apart from that explanation, the White Paper gives no exact definition of what civil society is or what it could or should be. The authors only give some examples of concrete organisations and associations such as trade unions, non-governmental organisations, professional associations, churches and charities, grass-roots organisations and so on (Commission 2001:15). The authors emphasise that the White Paper is primarily addressed to the civil society actors (Commission 2001:9), moreover they stress that 'civil society itself must follow the principles of good governance which include accountability and openness' (Commission 2001:15). But this is relatively irritating as civil society should be seen predominantly as an arena for voluntary action and for open and free public debate following its own rules of deliberation. Their actors should NOT be seen primarily as helpful co-governing agents for political and administrative purposes, co-opted and domesticated by ruling authorities (Eriksen 2001:5). Moreover, it is not easy to see how the White Paper interprets accountability in this context. In democratic theory, accountability means the decision-makers can be held responsible by the citizenry and that it is possible to dismiss incompetent rulers through freely contested elections (Schumpeter 1942; Popper 1962: 124; Przeworski 1999). As a very demanding democratic principle, accountability requires that citizens can discern whether governments are acting in their best interests and sanction them appropriately, so that those incumbents who act in the best interests of citizens are re-elected while those who do not lose out

(Przeworski 1999:36). What, then, is exactly meant by the White Paper's authors when using the principle of accountability in the realm of civil society?

According to the White Paper, what is needed 'is a reinforced culture of consultation and dialogue' (Commission 2001:16), including network-led initiatives that 'could make a more effective contribution to EU policies' (Commission 2001:18). In order to achieve this result, privileged partnership arrangements involving additional consultations with civil society organisations should be established. Almost everyone is included and is invited to be an important part of European governance provided that he or she is "organised". At first sight, reading through these somewhat unsatisfying passages of the text one is reminded of the slogan *Mehr Demokratie wagen* (to dare more democracy) of Willy Brandt, the former social democratic Chancellor of Germany. To be sure, it is goodwill that has motivated the authors to write these lines but it is not well thought out and offers a relatively 'limited conception of participation' (Magnette 2001:3). The proposals are designed to stimulate the involvement of active citizens and groups in some precise procedures, rather than to enhance the general level of public participation. However, when measured against our criteria of legitimate European governance many doubts arise.

First, even when we take into account the limitation of the Commission's governance concept to mainly consultation, what would happen if everyone takes these invitations to participate seriously? More and more participation in the pre-decision phase, additional consultation, a stronger involvement of networks that extend beyond and across hierarchies and that are characterised by a loose coupling of their constituent elements (Benz 2000) will generate even more potential

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veto-players in the multi-level game and would probably make decision-making even more time-consuming and cumbersome. Greater involvement of civil society actors in decision-making and control, based on the principle of participation, probably can be gained only at the expense of efficiency in the key areas of authoritative decision-making processes, and hence of problem-solving capability.

Secondly, seen from a democratic point of view, the input logic of the participation proposal is not entirely convincing since it includes only networks, organisations and associations but not the individual, unorganised citizen. Therefore, it is more a kind of modern neo-functional and even post-parliamentarian version (Andersen and Burns 1996:227) of the famous Gettysburg address, in which "the people" is replaced by "organisations". Moreover, given the tone of the White Paper the reader may have the impression that participation is not a fundamental democratic right of citizens, or to be precise, citizen's organisations, but a kind of favour provided by the generous Commission. The subjects invited for consultation and participation are not equipped with the rights and powers to sanction the rulers. The White Paper's appeal to the citizen and civil society is only half-hearted as, strictly speaking, 'citizenship entails not only to be ruled but also to rule in turn' (Eriksen 2001:5). The proposed "partnership arrangements" with civil society actors of all kind in most cases are not intended to lead to the binding agreements with which we are familiar in corporatist arrangements between state and private actors in some of the member-states. It is just the continuation of existing Community method practices with some improvements for organised groups, stakeholders and interested parties (Commission 2001:14). As these function-

al actors should be encouraged throughout the policy chain (Commission 2001: 10), a code of conduct should be adopted to determine who, how, when and on what to consult. None of these proposals would break with classic Community methods and its underlying philosophy used by the Commission. It is a typical top-down, expert-driven approach as participation and consultation can only be initiated and controlled by the institutions, should lead to enhanced governance capability, are limited to consultation and mainly directed to sectoral functional actors. Here, the underlying philosophy is heavily influenced by the Governance Task Force in the Forward Studies Unit which emphasised in their preparatory study for the White Paper that 'in terms of procedural rationality, the opinions of the people are not an obstacle to the effectiveness of a decision: they are an essential ingredient, and it would in fact be costly to ignore them or to fail to contribute actively to their formation' (Cahiers of the Forward Studies Unit 2001:19). Seen from a relatively output-oriented perspective, it makes sense at first sight to fulfil the criterion of "procedural rationality" by including experts in the decision-making process as much as possible. But it is exaggerated and indeed dishonest to speak of the empowerment of people in this context. Far-reaching and innovative proposals such as the idea, supported by the European Parliament (1996), to grant the citizen a genuine right to be consulted were not even discussed in the White Paper. In these circumstances, the civil society is likely to remain a euphemistic label for relatively elitist participation and consultation practice, limited to those citizens and groups who benefit from enough intellectual and financial resources to influence EU politics and policies (Kohler-Koch 1997).

This, however, is problematic. In limiting the concept of civil society to representatives of non-governmental organisations, the Commission draws on the early years of the Community method, with neo-functionalists encouraging the Commission to co-opt representatives of interest groups as allies against national governments (Haas 1958). One of the key elements of the neo-functionalist theory is that too much public debate and democracy is undesirable (Höreth 1999a: 112-23). But the authors of the White Paper do not recognise that the continuing enlargement of the EC and the immense expansion from a limited number of economic and social fields to much of the broad sweep of domestic policy has undermined the praised Community method. As the EU does not handle limited second-order functional problems anymore but instead a wide range of sensitive political and economic issues, open public debate and comprehensive contact with people on the ground is becoming essential.

Thirdly, it is remarkable that democratically legitimated national and subnational governments, national parties and national civil servants are not included in the comprehensive list of potential participants and partners for "additional consultation" in the preparation phase of the Commission's legislative initiatives. Certainly, the electoral authorisation of ministers at the national level and their accountability to their national parliaments do not by themselves suffice to provide democratic legitimacy at the EU level. But, instead of also trying to strengthen the relations with these elected and therefore democratically legitimated governmental authorities, the Commission wants more intense partnership relations with non-governmental organisations which, as "actors most concerned", should take responsibility for the

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preparation and enforcement of rules *i.e.* in the framework of co-regulations but also in binding legislative action. In the implementation phase, however, member-state governments should of course still be held responsible for the correct implementation of rules. They also should play a role in selective target-based tripartite contracts involving the Commission, member-states and a regional or local authority. In these contracts, the Commission defines the terms, conditions and particular objectives, the local/ regional/ subnational authority implements them while national governments, finally, 'would play a key role in setting up such contracts' (Commission 2001:13), and would be held responsible for the correct implementation. Evidently, this is not a very comfortable situation for member-state governments since they would not only be downgraded to being agents of the Commission, for its part playing the role of the principal, but moreover lose significant influence in relation to their regional and local governments.[3]

Greater Efficiency and Effectiveness by Changing the Rules of the Multi-level Game? The Future Interaction of European Institutions, Member-states and Subnational Authorities

One of the main concerns of the White Paper is that greater efforts to speed up the legislative process have to be made. Therefore, the White Paper seeks to widen the decision-making role of the Commission by enhancing its role in the application of new tools and insisting that the role of the Council and Parliament be restricted to essential features when legislating, whilst the details should be left to the Commission. Consensual decision-making is criticised as time-consuming

and cumbersome. Therefore, when legally possible, the 'Council should vote as soon as a qualified majority seems possible rather than pursuing discussions in the search for unanimity' (Commission 2001: 22). One of the key problems of European governance, as seen in the Commission's White Paper, is the 'reluctance of Council and European Parliament to leave room for policy execution to the Commission' (Commission 2001:18). This means 'that legislation often includes an unnecessary level of detail' that is 'damaging effectiveness' (Commission 2001:18).

The Commission's approach to resolving the resulting decision-making and implementation problems is manifold. Besides the general observation that better legislation and more effective implementation needs more 'confidence in expert advice' (Commission 2001:19) and a 'combining of different policy instruments for better results' (Commission 2001:20), the most important proposal is that 'whichever form of legislative instrument is chosen, more use should be made of "primary" legislation limited to essential elements … leaving the executive to fill in the technical detail via implementing "secondary" rules' (Commission 2001:20). While 'Council and European Parliament should limit primary legislation to essential elements' (Commission 2001:23), the Commission 'must refocus on its core missions' (Commission 2001:8-9) which are to 'initiate and execute policy' (Commission 2001:29, 34) and to be the 'guardian of the Treaty and international representation of the Community' (Commission 2001:30). In addition, 'Member States should refrain from a disproportionate level of detail or complex administrative requirements when implementing Community legislation' (Commission 2001:23). Finally, the more common use of co-regulation is preferred by the Commission (Commission 2001: 21) and, in following Majone's famous

yet also very problematic plea for the European regulatory state (Majone 1996; Höreth 1999a:285; Jachtenfuchs 2000:7), new regulatory agencies at the EU level should be established (Commission 2001: 24) which 'reinforce the effectiveness and visibility of EU law' (Commission 2001: 33) 'where a single public interest predominates and the tasks to be carried out require technical expertise' (Commission 2001:24).

What are the consequences of adopting these far-reaching proposals? The main motive behind the Commission's suggestions is paranoid defence (Armstrong 2001), the revitalisation and reinvigoration of the Community method (Commission 2001:29, 34) which was, still is, and will in the future be, in the Commission's opinion, the guarantee of European integration's success. But the Commission's White Paper principally also questions the necessity of the so-called comitology which is, ironically, not only a significant part of the success story of the Community method but also the nucleus of a developing new deliberative form of democratic legitimation (Joerges and Neyer 1997; Schmalz-Bruns 1999; Eriksen 2000; Habermas 2001). In the view of the White Paper, however, the execution of European policy is the exclusive task of the Commission that wishes to be less hampered by comitology procedures while 'Council and European Parliament as the legislature have to monitor and control the actions of the Commission against the principles and political guidelines in the legislation' (Commission 2001:31).

At first sight, the efficiency and effectiveness of European policy-making could indeed be enhanced if Parliament and Council were to restrict their involvement in legislation to defining the essential principles and if the Commission, while executing, defines the technical details without being encumbered by comitology procedures. This is especially the case when decisions are made by majority rule. But this lean Community method which tends to weaken member-states' influence in shaping and executing European policy can only be an adequate decision-making procedure as long as the subject in question is not one of high political salience for national constituencies (Scharpf 2001:2). If this is the case, legitimate majority rule presupposes a strong European collective identity which is not realised in the present EU. Therefore, European policy, especially in areas highly controversial between the member-states, must still be the result of an intergovernmental consensus. For the same reason, it is dubious to exhort the Council to forego the search for unanimity and to pursue qualified majority voting wherever possible to speed-up the legislative process. This advice ignores the complex nature of inter-state compromise and minority protection which reflects the existing basis of and limits to trust and solidarity within the emergent Euro-polity.

Against this background, it is highly questionable to propose a strategy that tends to strengthen the role of the Commission at the expense of the member-states and their generally consensus-seeking approach to European policy-making. As a crucial element of the zero-sum-constellation among the different sources of legitimacy (Höreth 1999b), this would be the inevitable result when following the advice of the White Paper to restrict the legislative role of the Parliament and Council to defining the essential principles while leaving the decision on technical details, which indeed could be highly controversial at the end, to the discretion of the Commission. Thus, even the current time-consuming practices during the preparatory phase are better than adopting the Commission's new strategy:

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Given the diversity of economic conditions, political cultures, institutional structures, policy legacies and public attention among member-states, it seems inevitable that many policy choices below the level of "essential principles" will have high political salience and might be totally unacceptable in one country or another. At present, these pitfalls are avoided by the search for consensual solutions that avoid incompatibilities with specific national constraints in elaborate intergovernmental negotiations that take place in the preparatory phase before a Council decision as well as in the implementation phase (Scharpf 2001:6).

It is, indeed, the main function of the COREPER to resolve potential conflicts among member-states before they reach the Council. This function could be seriously damaged if the Commission kept its promise to 'withdraw proposals where inter-institutional bargaining undermines ... the proposal's objectives' (Commission 2001:22).

Regarding implementation of the Council's decisions it is understandable that the Commission wishes to have a powerful say when further specifications are needed before directives can be applied. In practice, the Commission already performs this function together with comitology committees in which regulations proposed by the Commission are discussed by civil servants and experts nominated by member-state's governments. Theoretically, management committees and regulatory committees have the authorisation to disagree with a Commission's proposal and to appeal to the Council for a final decision. Of course, this option (in practice almost never used) weakens the position of the Commission. But it is counterproductive to demand the abolition of these committees (Commission 2001:31) as their exis-

tence effectively forces the Commission to search for consensual solutions in the implementation phase as well. Therefore, this complex consensus-seeking implementation procedure — legally upheld by the European Court of Justice (Ehlermann 1971) — is worth preserving, as it is ultimately one of the most important prerequisites for compliance in the member-states (Falke 2000).

At first blush one might agree with the Commission's proposals to make decision-making within the EC more efficient and implementation more effective. Current practices are often annoying because not only are they time-consuming and cumbersome but they also water down the initially reasonable proposals of the Commission. Moreover, when being discussed in the comitology committees proposals are often overloaded with administrative details satisfying specific national demands. In the end, the Commission is incorrectly blamed for over-detailed and complex regulations which in reality are caused by the specific concerns of member-states and their administrations. Nevertheless, seen from a broader inter-institutional perspective it is unuseful to change this uncomfortable situation of the Commission by redefining the rules of the multi-level game of European decision-making and implementing so as to replace consensus-seeking mechanisms with unilateral powers of the Commission.

Apart from that, it is normatively unacceptable that the Commission wants to use the threat to withdraw initiatives when they are in danger of being changed by intergovernmental negotiations. There are two reasons for this. First, such a confrontationist strategy is surely not normatively compatible with the principles of good governance which are favoured and praised by the White Paper. Secondly, if the Commission frequently uses this

threat the Council could react in the same unproductive manner by simply rejecting those Commission initiatives which do not respond exactly to the demands of member-states, demands that would otherwise be met in consensus-seeking negotiations. As Scharpf (2001:7) put it:

> *In other words, in a decision system with multiple veto positions, confrontation strategies can in principle be played by all parties — and if they are played by all, gridlock is the most likely outcome. By the same token, it is hard to see how the Commission could force Member States to accept the abolition of the comitology system and to leave legislative choices in the "implementation" stage entirely to its own discretion.*

Measured against the above-defined evaluation criteria of legitimate European governance, the Commission's proposals to enhance the efficiency and effectiveness of European policy-making are doomed to fail. The fundamental change of current practices in European policy-making and implementing would hardly make European legislating more efficient and effective (output legitimacy). Secondly, it is hard to see how the input legitimacy of European governance would be strengthened as the proposals do not give the European Parliament greater influence in policy-shaping during the implementation phase. Thirdly, measured against the criterion of "borrowed" legitimacy of European policies through member-states and their legitimated authorities, the White Paper's proposals would evidently weaken the indirect democratic legitimation of European policies that is derived from the agreement of the democratically elected member-states' governments.

CONCLUSIONS: RETHINKING THE MULTI-DIMENSIONAL REQUIREMENTS FOR LEGITIMATE EU GOVERNANCE

THE WHITE PAPER'S AUTHORS ARE RIGHT WHEN WARNING THE READER AT THE OUTSET THAT THEY DO NOT AND CANNOT BE EXPECTED TO PROVIDE A MAGIC CURE FOR EVERYTHING. But it is not only unfortunate that the Commission's White Paper has overlooked the many challenges to European governance. It is also annoying that it gives erroneous answers to actually identified challenges and pays only lip service to the EU's legitimacy problems. Moreover, some details in the White Paper are simply untrue: it is wrong to stress that the EU's powers 'are given by its citizens' (Commission 2001:8). The EU's institutions are exercising powers which were either delegated by the governments of member-states or were usurped by the Commission and the European Court of Justice through far-reaching interpretations of Treaty provisions (Burley and Mattli 1993; Höreth 2000). And how can the contradiction be explained that, on one hand, citizens give their powers to the EU while, on the other, the same people are blamed for their ignorance as they do not even 'know the difference between the institutions' (Commission 2001:8)? Here again, in reducing the legitimacy gap of European governance to a relatively technical information problem and a simple lack of knowledge, the Commission's approach is primarily a technocratic one camouflaged in would-be democratic terms. The truth behind such fine words as "democracy", "transparency" and "participation" is that the White Paper reflects a relatively technocratic attitude on how to resolve the governance problems.

Even more annoying is the fact that the Commission's White Paper reveals a

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lack of understanding of the pre-conditions for successful governance in the multi-layered system of the EU. Of course, given that the Commission wants to regain ground which it has lost in relation to the Parliament and Council, especially in running the new co-decision procedure established by the Amsterdam Treaty (Article 251 of the TEU), and surely wants to reassert its role in the system of inter-institutional decision-making, most proposals in the White Paper are readily understood (Héritier 2001). Many of the White Paper's suggestions may be interpreted as attempts to regain power in the inter-institutional decision-making process: the avoidance of over-detailed legislation and the use of other policy tools, the strategic use of the right to withdraw legislative proposals, the restriction and even partial abolition of comitology and, last but not least, the use of regulatory agencies under the Commission's control. Nevertheless, as we have seen above on normative grounds it is unreasonable to make proposals that will reduce the role of member-states in policy-making and implementation by seeking to bypass them wherever possible.

It is, then, puzzling just how self-centred the White Paper's view of European governance is. When reading the paper one may sometimes get the impression that the Commission is fighting a pointless, zero-sum-battle against the member-states — officially in the name of the venerable Community method but unofficially in order to jealously preserve its own vested interests. It is not only irritating that the — essentially technocratic — Community method (Featherstone 1994; Wallace and Smith 1995) remains remarkably unquestioned in the White Paper, even though today governing in Europe requires new and probably more democratic modes of governance and methods since the present real multi-level polity of

the post-Nice EU is very different in level and scope from the "would-be polity" (Lindbergh and Scheingold 1970) we saw in the 1970s. In this context, the mindset of the Commission is strikingly unaffected by the evidence of popular disillusionment and disappointment with the Community method over the last decade. The White Paper's authors also fail to recognise that the Commission itself is part of the overall governance problem — the whole thrust of the White Paper is that the problem lies elsewhere. But the Commission itself has gross inefficiencies, has not entirely rooted out petty corruption, and has so far placed a relatively low priority on internal reform. This evidently weakens the Commission's moral authority in proposing changes in EU governance which would give it more power and autonomy.

The egocentric and self-interest driven problem-perception of the Commission's White Paper is also an inadequate approach for other reasons. Legitimate multi-level governance in Europe requires that all the levels, authorities and institutions involved find solutions to problems and constraints; especially those that the Single Market Project itself caused for member-states in policy areas which have not been Europeanised (Scharpf 1999). If the EU wants to be part of a solution 'it can only be so in an enabling role which must support and strengthen, rather than undermine, the political legitimacy, institutional integrity and problem-solving capacity of Member States' (Scharpf 2001:9). Here, the concept of autonomy-compatible co-ordination (Scharpf 1994) combined with patterns of differentiated integration, closer co-operation and open coordination is a useful preservationist (Gustavsson 1998:115) strategy for European governance yet it is not systematically discussed in the White Paper. As

long as the European governance system lacks a sufficient collective identity and the intermediary structures to effectively integrate different political, economic and social interests into the European polity, it will also lack the quality of "government by the people". Therefore, it is indisputably the case that legitimate governance in Europe depends to a large extent on strong and intact member-states, where we still find these criteria being fulfilled. In this sense, it is counter-productive to weaken the sources of legitimacy stemming indirectly from the involvement of member-states in European policy-making processes; which seems to be one of the main objectives of the White Paper. Not only the administrative resources but especially the legitimacy basis of the Commission are much too weak to do without this borrowed legitimacy of member-states both in the preparation phase and in the implementation phase of European policy-making. Consensus-seeking modes of governance may be costly and cumbersome at first sight, but they lend legitimacy to policy-making in fragmented systems of decision-making which lack a collective identity.

Legitimate European governance is a two-sided coin: what is urgently needed for more legitimate governance in Europe is both more national respect for the Commission's worthy contributions to European solutions and also more European respect for the autonomy of member-states and their idiosyncratic preferences, policies and institutions. It is of course difficult to combine respect for the autonomy of member-states on one hand with a sense of the need for European-level regulation on the other hand. But within the EC's present institutional structures and procedures and its fragile triangle of legitimacy, it makes sense to develop careful strategies of dif-ferentiated integration and closer co-operation which increase the European capacity for problem-solving even in policy areas of high divergent national interests without ignoring the need of the member-states for autonomous solutions. Possible instruments could include the more common use of so-called framework directives that leave the formulation of more specific regulations and their implementation up to member-states instead of Commission and comitology procedures. This is also proposed in general by the White Paper. It could effectively work when combined with open methods of co-ordination in which member-states, after legislating essential elements at the European level, have to make clear what they intend to do at home. This new policy tool facilitates further co-operation and the exchange of best practice in view of common targets. Of course, open methods of co-ordination could be monitored through the Commission that 'should be closely involved and play a coordinating role' (Commission 2001:22) and, moreover should be evaluated by peer review. Last but not least, if necessary, the Council could introduce additional legislation in reaction implementation problems, special deficiencies or, in the worst case, the beggar-thy-neighbour behaviour of individual member-states.

In the shadow of the ongoing enlargement process, however, the fact that the Commission's White Paper makes proposals heading in this direction should be welcomed. It is to be expected that both new tools, co-regulation and the open method of co-ordination, would lead to less resistance from those who bear the costs of implementation, whether they are private actors in the case of co-regulation or member-states in the case of the open method; because in the context of these new tools the actors most concerned have a say in shaping the policy

goals and the instruments to be used. Certainly, these new policy tools may also have their disadvantages as these instruments offer less legal certainty (see Héritier 2002). But no argument can explain why the relatively flexible mechanism of open co-ordination should be limited to policy areas in which legislative action under the Community method is not possible, as the White Paper demands (Commission 2001:22). The counterargument is more convincing:

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> *Member States would not need to march in step to the bark of the Commission's drill sergeant to demonstrate that they are good Europeans. Instead, they could respond to the specific problems they are facing with solutions that are compatible within their existing institutional framework. At the same time, however, national policy choices would be disciplined by the challenge to achieve jointly defined targets and by the institutionalised need to consider their impact on other Member States. In short, in developing the open method of co-ordination, the EU may have discovered a constructive approach to dealing with the growing pressure for European solutions under conditions of politically salient diversity* (Scharpf 2001:13; see also Walker 2001:34)

No doubt it is difficult to realise these proposals in practice. But it is, of course, better to concentrate on such problems and their solutions than to hold either Brussels or the member-states exclusively responsible for the veritable legitimacy crisis of European governance. Obviously we need both strong European AND national institutions to resolve the problem of how Europe should be governed in the future.

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1 For a comprehensive overview on the European governance debate see Hix (1998), Höreth (1999:138-59), and Jachtenfuchs (2000).

2 For further details on the legislating powers of the European Parliament after Nice see Giering (2001).

3 For a more optimistic scenario see Schmitter (2001).

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