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**Mountain or Molehill ?:  
A Critical Appraisal of the Commission White Paper on Governance**

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*Mountain or Molehill?*  
*A critical appraisal of the Commission*  
*White Paper on Governance*

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# THE COMMISSION WHITE PAPER AND THE IMPROVEMENT OF EUROPEAN GOVERNANCE

**Beate Kohler-Koch\***

My presentation has three points:

1. A critical account of the strategies suggested in the White Paper concerning the improvement of EU governance;
2. some suggestions on how to strengthen the Commission's approach in line with the basic philosophy of the White Paper; and,
3. a presentation of a different perspective on how to approach the issue of European governance.

## **1. Critical account**

A close reading reveals that the White Paper has three main objectives: (1) to redress the institutional balance in favour of the European Commission, (2) to redesign rules and procedures to enhance efficiency in policy formulation and implementation, and (3) to put even more emphasis than in the past on openness, transparency, and participation.

Considering the context of the publication of the White Paper, it is not surprising that it reflects the institutional interests of the Commission. The central message is that a return to the "Community method" will promote the quality of European governance and that this, above all, implies giving the Commission a more prominent role in EU policy formulation and implementation. A critical assessment has to take issue with the assumption that, given the context of the present and future conditions, this role ascription is still appropriate.<sup>1</sup> My argument is that the propositions of the White Paper are derived from a deficient analysis of the nature of European politics and a technocratic understanding of political legitimacy. In order to prove my point, I will provide evidence that the White Paper argues in favour of redressing the institutional balance (1.1), is biased in favour of efficiency and effectiveness (1.2), and reflects an understanding of 'good governance' that neglects basic principles of democratic legitimacy (1.3).

### ***1.1. Redressing the balance of power between EU institutions***

When reading the White Paper carefully the plea to "revitalise the Community method" (p.29), demanding that "(e)veryone should concentrate on their core tasks" (p.29), amounts to the

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<sup>1</sup> Scharpf's harsh criticism of the White Paper originates from the neglect of conditions of context: "...the White Paper is generally not interested in discussing the substantive problems confronting the EU and its Member States at the present time – and that is an omission with serious consequences for its definition of governance problems, and even more so for the effectiveness and legitimacy of their proposed resolution." (Scharpf 2001:3) do these corrections correspond to the text in its final version?

strengthening of the Commission. In part, it is an endeavour to regain lost ground, in part it is an attempt to expand and even redefine the constitutional role of the Commission.

I do not want to review the propositions in detail, but instead wish to give a short-hand summary:

- Choice of policy instruments:

Concerning legislation, the White Paper reveals a clear preference for the use of regulations and ‘framework directives’. Regulations exclude any further interference by national parliaments (and, in this way, indirectly by national governments) because there is no transposition into national legislation. ‘Framework directives’ look attractive because they are considered to be ‘less heavy-handed, offer greater flexibility as to their implementation, and tend to be agreed upon “more quickly by” the Council and the European Parliament’ (p.20). The efficiency of the decision-making process is a major concern<sup>2</sup> and, with this objective in mind, it is logical that the White Paper goes on to say that ‘(w)hichever form of legislative instrument is chosen, more use should be made of ‘primary’ legislation limited to essential elements ...’. The technocratic bias is exposed by the subsequent statement which circumscribes the respective roles of the legislative bodies (the Council and the Parliament) and the Commission ‘... leaving the executive to fill in the technical detail via implementing “secondary” rules’ (p.20).

The objective of regaining lost ground is evident in other propositions, too. The co-decision procedure has brought the Council and the European Parliament more closely together. Under the given time constraints and faced with the difficult task of managing a complex negotiating system, bilateralism creeps in, leaving the Commission to be the odd man out and re-writing the Commission’s proposal. The White Paper supports “early agreement”, *i.e.*, concluding the decision-making process on the first reading, but insists on the Commission’s participation. And in the event that the agreement between the Council and the European Parliament threatens to downgrade the Commission’s proposal, the White Paper suggests that it should make use of its right of withdrawal. Moreover, the White Paper advocates that the Commission should be freed from comitology control and that executive regulatory activities should, whenever possible, be delegated to EU agencies (preferably under the control of the Commission). When it comes to devising new tools of policy-making and policy implementation, the proposition, again, entails the expansion of the European Commission’s range of activities. (Héretier 2001).

At first sight, all these propositions make sense and their case is well-argued. But under closer scrutiny, the evolution of the living constitution is more promising both in terms of democratic legitimacy and decision-making efficiency. Let us take the case of the new co-decision procedure for example. Upgrading the European Parliament’s decision-making power and introducing time-limits have been introduced in order to diminish the democratic deficit and avoid gridlock. Therefore, good normative reasons and sound procedural reasons support closer collaboration between these two institutions. On what grounds should this development be redressed? What has the Commission to offer in terms of legitimate reasons and procedural efficiency to support its claim to have a greater say in the game?

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<sup>2</sup> The proposition is made under the headline “better and faster regulation”.

Even when the Commission's original proposal is watered down – which certainly amounts to a frustrating experience – would it be legitimate for the Commission to withdraw its proposal and, in this way, delay the decision-making process and impose its own will on the European Parliament and Member State Governments? The same argument holds true for the Commission's desire to have a greater say in formulating regulations. On what grounds should the Commission have a legitimate right to decide on 'secondary rules'? The Commission is the guardian of the Treaty, *i.e.*, of a political programme negotiated by Member States, not the guardian of a self-proclaimed "European" interest. Consequently, in my assessment, the White Paper is not just over-ambitious in defining the Commission's role, but also heading into the wrong direction. I attribute this ill-perceived strategy to a mistaken perception of the nature of EU policy-making.

### *1.2. The White Paper's emphasis on efficiency and effectiveness*

The legitimacy of the EU is mainly based on "output legitimacy". For decades, European integration has been associated with delivering welfare and peace and has, as a consequence, enjoyed broad popular support. Today, internal peace is no longer at stake and the single market is a well-established reality which is rather associated with unwanted pressures on individual welfare than with tangible improvement of material benefits. The advancement of European economic and monetary union is perceived to be an instrument of increasing competition which threatens to dismantle the national welfare state.

Public opinion polls give evidence that European integration has become an élite affair. Governments are pushing a reluctant public to accept their decisions both on Europe and in Europe. In view of this context, I challenge the White Paper's emphasis on efficiency and effectiveness. We have to take account of the fact that European governance is a highly political affair. Even when governments prefer to work together in order to take advantage of the superior problem-solving capacity of common action, the contents of this common action is bound to be conflict-ridden. Similar problems in the individual Member State are not necessarily common problems. And above all, problem-solving strategies are not self-explanatory. They have to meet quite diverse normative and factual preferences. What representatives of EU institutions consider to be an adequate policy may not necessarily match the expectations of the EU citizens.

Hard choices have to be taken, and they have to be taken on political grounds. On most issues, policy-making is a matter of choice. Decision-makers have to choose between competing preferences and decide in favour or against well-founded interests and long-cherished ideals. This truism is not at all reflected in the White Paper. Instead, it reads as if policy-making amounts to little more than an effort in co-ordination and accumulation of the necessary expertise: the Member States are blamed for holding up the legislative process (p.5) and for insisting on 'an unnecessary level of detail' (p.18) in EC legislation. The remedy proposed is 'investment in good consultation' (p.20) and to leave it to the Commission 'to fill in the technical details' (ibid). The promise is that this 'may produce better legislation which is adopted more rapidly, and easier to apply and enforce' (ibid). No one would object to "better legislation" – but the choice is not between the bad and the better, but between alternative options. There are different preferences, different criteria of evaluation and, last but not least, distributive and re-distributive effects that have to be taken into account.

When Member States are not willing to "speed up legislation" and continue to amend detailed procedures when transposing directives into national law, they do not do it out of idiosyncratic



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inclinations. On the contrary, they respond to, or anticipate, the problems that their citizens are facing, which will finally induce them not to comply. Politics is not a truth-finding exercise - it does not look for the “one best solution” which could be provided by expert knowledge. Expert consultation very often just reproduces the conventional wisdom held by an epistemic community, and is hardly ever free of a political bias.

Governments may, indeed, be captured by partial interest groups, but the Commission itself is faced with ‘capture’. Partial, but powerful, interests aim at including the Commission in a ‘winning’ advocacy coalition. What are the controlling mechanisms at national and European level to avoid such ‘capture’? At national level, governments have to run for re-election and convince the electorate that they have not traded the common interest for the privileges of a small group. Such controlling mechanisms are absent at EU level.

Again, the whole story boils down to the question of the Commission’s legitimacy to take the lead. European governance is the exercise of power. Power is exercised in a different way and sometimes with different means than in Member States, but it is still taking arbitrary decisions that affect peoples life. Thus, it has to be legitimated. Legitimacy is needed both for normative and for functional reasons because illegitimate rule breeds political instability.

### ***1.3. Openness, transparency and participation: the principles to assure good governance***

*“The goal is to open up policy-making to make it more inclusive and accountable. A better use of power should connect the EU more closely to its citizens and lead to more effective policies.” (p.8)*

This is just another example of the White Paper’s neglect of conflict of interests and the dialectic of policy-making: Openness and inclusiveness will most likely give voice to competing interests which, in such a heterogeneous setting as the EU, will be difficult to reconcile. The most pertinent question, namely, how to manage political reconciliation effectively, is not dealt with in the White Paper. Combining openness with inclusiveness may not lead to more effective policies, but to a blockage of all or any policy output.

Furthermore, when talking about the principles of good governance, the concern should not just be for the smooth functioning of the system, but also for the normative quality of European governance. Legitimacy is, or at least should be, at the core of any deliberations about the future of European governance. The White Paper refers to five principles of European governance which come close but yet fail to meet the established consensus of what actually constitutes ‘legitimate governance’.

Openness in terms of improved transparency is a prerequisite for public accountability, and openness in terms of better access to decision-making bodies is a pre-condition for political participation. Participation and accountability are two core elements in any democratic system. The way in which both categories are introduced in the White Paper is, however, disappointing. ‘Wide participation’ is a vague concept that leaves out a clear cut commitment to the two essential elements that turn participation into a democratic device:

- (1) equality: *i.e.*, the equal chance to participate (or at least institutionalised mechanisms for a representative selection of participants), and
- (2) reliability: *i.e.*, a commitment to “binding agreements” on the part of decision-makers; without such a commitment “participation” is just an opportunity to raise a voice without of promise of it being heard.

The concept of accountability is treated in an equally disappointing way. Accountability has to be more than what is written in the White Paper. It is not sufficient to have decision-makers simply ‘explain and take responsibility’ for what they do (p.10). In a democratic system, accountability is synonymous with institutionalised mechanisms to sanction unwanted behaviour.

Indeed, the European Union’s ‘legitimacy today depends on involvement and participation’ (p.11) - output legitimacy has to be supplemented by input legitimacy. But involvement, participation and accountability have to be organised in such a way that they meet the criteria of democratic standards. We should not lower our democratic standards just because it is difficult to meet them in the European Union.

Unfortunately, the White Paper does not address the question of equal and effective participation nor of institutionalised accountability. The proposal for change for “better involvement” (as the headline reads, p.11) is - apart from normative reasons - disappointing with respect to practicability: there is a long list of potential to be involved and there are innovative ideas such as ‘on-line consultation through the inter-active policy-making initiative’ (p.15). However, I find it difficult to take the promise ‘to consult better on EU policies’ (p.16) seriously when the obvious problem of how to tackle both the information overload and the delicate problem of selecting from among the advice given is not even mentioned. Even today, approximately as many interest group representatives are working in Brussels as civil servants are working for the Commission. The comment of an experienced lobbyist that “ear-time is scarce” is absolutely to the point. How will the Commission and other EU institutions manage an exploding demand for interaction?

## 2. Improvements

The chapter on “Better involvement” may be used as an example for the improvement of the propositions within the conceptual framework of the present White Paper. Let us follow the the argument of the White Paper that citizens should get more actively involved (p.15). The most plausible approach would be to start with an analysis of the deficiencies of the present system. Many of them are well-known and documented in some of the Commission’s own papers (COM(2000) 11final, 18.1.00). They are, however, not reflected in the White Paper at all. Just to recall some of the most obvious deficiencies:

- a) The unbalanced representation of societal interests.

We all know that, because of the logic of collective action (Olson) and the unequal distribution of the capacity to organise, to raise a voice and have an impact on policy-makers (Offe) we are faced with unequal interest representation which is even more pronounced at EU level than it is at national level. Producer interests are well- represented and well-equipped with financial and human resources; they perform many activities and enjoy well-established contacts with EU institutions. Organisations representing the interests of the ordinary citizen are comparatively weak, ill-equipped and less

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numerous. Building bridges from local level to supranational level for grass-root actors and, thereby, forming trans-national alliances is a formidable task which only few can achieve. To make matters worse, they have little to offer to EU institutions which could turn them into an attractive negotiating partner.

b) Insecurity about the yardstick for “representativity”.

To ask for information in order to know who is talking on behalf of whom, to get a better assessment on what sections of society are represented and how many citizens are involved is necessary, but not sufficient. We are faced with quite a number of organisations that do not correspond to the ordinary type of interest association which is based on membership. Entrepreneurial organisations such as Greenpeace can hardly be excluded on the basis of not meeting the above-mentioned criteria of representativity.

c) Selectivity in the interaction between EU institutions and interest representatives.

Though resources are decisive for interest group activities, access and close co-operation depend on the preferences of EU institutions. Case studies on individual policy initiatives give ample evidence that, in particular, the Commission chooses of its own free will who gets access and whose advice will be asked for and listened to. EU institutions have a rich choice, and yet they have decided not to be constraint by any formal and informal rules. Moreover, they hardly ever have to face political sanctions for being unbalanced. This procedural practice is defended on grounds of convenience and efficiency, but it clearly lacks democratic legitimacy.

The White Paper claims that the Commission is dedicated to involving ‘civil society’ on a larger scale. This dedication makes it indispensable that a second thought be given to the problematique of unequal representation, to the unresolved question of adequate criteria of representativity, to the issue of avoiding selectivity and to the communication overload. The White Paper does not provide any answers to these problems and, to make matters worse, does not even raise these questions. Some phrases read as if the authors confuse wishful thinking with reality,<sup>3</sup> and some arguments are unbalanced. Information overload is mentioned with respect to the ad hoc consultation bodies. The Commission sees a need “to rationalise this unwieldy system” (p.17) but it does not see any parallels to the envisaged involvement of ‘civil society’. The proposals included in the White Paper give evidence that the Commission is far from managing its own consultation process efficiently: it still has to take stock ‘of existing sectoral consultative’ (p.17), and it aims at nothing more than ‘a code of conduct that sets minimum standards’ (p.17), and it ‘intends to establish...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’ (p.15). This very modest regulatory impetus gives preference to the principle of ‘openness’ and leaves the question of whom is consulted and heard to the discretion of the individual civil servant within the Commission.

There is no deliberate strategy regarding objectives and no consideration of how best to use public ‘involvement’: Why should ‘civil society’ be involved:

to improve the Commission’s knowledge base?

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<sup>3</sup> Just to give one example: organisations of the so-called “civil society” are not mobilising those suffering from exclusion or discrimination, but are mainly organising those who have already the choice of “exit” and “voice” (Hirschmann).

to get a better assessment of competing preferences? (p.15 alludes to getting help ‘to arbitrate between competing claims and priorities...’)

to furnish support when negotiating with the Council and the European Parliament (not to mention inter-departmental conflicts)?

to strengthen legitimacy by expanding deliberation?

to advance participatory democracy?

A White Paper should not be confused with a seminar paper. Nevertheless, to make the White Paper presently under review convincing, a more stringent line of argument would be needed.

### 3. European Governance put in a new perspective

Why is European governance so problematical?

First, because revitalising the Community method proves to be a dead-end street because the remedies of the past will not cure the problems of the future. The EU has definitely moved from negative integration to a political enterprise. With more problems of high political salience on the agenda and profound cleavages still along national lines,<sup>4</sup> Member State governments are key players for three reasons:

- with few exceptions, the average citizen, or at least the majority of citizens, trusts their government to be able to “deliver” and, when they are frustrated, they have the choice to vote for the opposition in the next election;
- they enjoy institutional legitimacy, *i.e.*, apart from the electoral legitimacy, they are part of an uncontested institutional system;
- the nation state is still considered to be the only “truly” legitimate place for hosting a society.

Compared to governing a nation state, legitimate governance in the European Union is precarious. According to the model conception EU common policy lacks legitimacy not in terms of governance for the people but government of the people:

Member States agree to formulate a common policy because joint problem-solving provides some added value. In terms of policy performance, the EU is, from a systematic point of view, not inferior to domestic policies; the process may be more cumbersome and the compromise agreed upon not as close to the median voter as it may be in a national setting. Yet, despite this, the policy is expected to be more effective.

Despite public apprehension that the Union is far remote from the European citizen, there is still a widespread belief that the EU is the appropriate level for coping with quite a number of political issues and that – in principle – the institutions are apt to do it.

So far, there is little difference between both systems. Concerning government of the people, however, the EU is evidently deficient. The orthodox reading is that we neither have a European

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<sup>4</sup> Just take the example of the reform of the national pension systems; (Scharpf 2001:4)

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*demos* nor a European state, and without achieving one and the other (which should come first is object to intense controversies) the EU will lack legitimacy.

In my reading, this orthodox view is outdated. In Europe, we live in a 'post-Westphalian' system; the state of 'modern times' is a construction of the late nineteenth century which is not longer a valid model to capture reality. Nevertheless, it is still occupying people's mind. The vision of a hierarchical, unitary entity is present in the White Paper, too. It implies that there has to be a political body (the Commission) to act as the guardian of the "common interest", to be in charge of speeding up decision-making, and engaged in strategic planning in order to set the long term objectives for the political community.

However, what is needed instead is the vision of an EU with nation states not just as a transitory but as a permanent type of polity; a construction as legitimate as the state. This EU polity is both: a compound and a unitary system. Some actors are still confined within their nation states and rely on national governments to pursue their interests through multi-level governance. Others move more easily across boundaries, address EU institutions directly and take the EU as single playing field. In order to function, this kind of polity does not need citizens with a predominant European identity. The ("imagined") political community is still the nation. The Union will be based on a "political society" with national, though 'Europeanised', identities.

From this perspective, many of the White Paper's propositions could be read in a different way. 'Better involvement' would not aim at enhancing the European Union's legitimacy in terms of making the decision-making process more democratic (which it does not). Instead, it might contribute to a learning process that might trigger a Europeanisation of identities and it might activate trans-national intermediary organisations that could contribute to the evolution of a European public space. Involvement, not just in consultations with EU institutions but also in the activities of European networks, would transport the idea of a legitimate polity that was different from the concept of the modern state. However, this will only happen when we give up the idea of the state as the one and only blueprint for the political organisation of a society. What is called for is a new "referentiel" (Jobert) to be elaborated jointly by both scholars and politicians.