



EUROPEAN COMMISSION

FORWARD STUDIES UNIT

Developping New Modes of Governance

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1. RECENT DEVELOPMENTS IN INSTITUTIONAL AND ADMINISTRATIVE REFORM

1.1. Introduction

For those who have been involved in the discussions about European Governance instituted by the Forward Studies Unit at the beginning of 1996 and continuing by way of seminars, workshops, working papers and ultimately this book, these are surely very encouraging times. Reform of the way in which the European institutions go about their business has not had such a high profile - and the feeling that genuine change is possible has not been so tangible - since the days of the Delors Commission. But whereas the emphasis then was on the adaptations necessary to complete the Single Market, now the focus of attention is upon what must be done to achieve *political integration*. This is a project that is perhaps fraught with even more difficulty than its economic counterpart insofar as it raises serious questions about the nature and practice of democracy in contemporary conditions, but it is one that, for the same reason, offers the possibility of rich dividends if successful.

It is possible to identify three key initiatives in this regard. Two of these, the Intergovernmental Conference (IGC) on institutional reform¹ and the process of administrative reform within the Commission,² are relatively clearly defined. The third, 'Shaping the New Europe', is at present more nebulous - of necessity given that it represents the Commission's Strategic Objectives for 2000-2005.³ It is possible to predict that because of the background to the first two and the consequent political will that underpins them, they will be driven to completion with relative efficiency. The third, by comparison, because of its particular status and because it raises more difficult questions for all of those involved in the European project, is just as likely to have a more painful progress and its success is by no means assured.

We argue in this paper, however, that this third initiative is the most important for the future of Europe - so important indeed that the processes of institutional and administrative reform need to be understood in its context if their impact is not to be entirely lost or if they are not in fact to become counterproductive. This is a serious contention and one that needs to be carefully justified. We begin, therefore, (section 1) by examining briefly the first two reform initiatives, drawing out the implications of the precise circumstances in which they arose and thus identifying the limitations and opportunities inherent in each. We suggest that the opportunities can only be realised in the context of a *more adequately complex understanding of the environment in which the European institutions must work in the years to come*. We recognise that the third initiative, the Commission's Strategic Objectives, appears to respond to some extent to

¹ Launched on 14 February 2000 at the General Affairs Council, Brussels.

² 'Reforming the Commission: A White Paper' Communication from Mr. Kinnock in agreement with the President and Ms. Schreyer, 1 March 2000 - hereafter referred to as the White Paper on Administrative Reform.

³ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions; Strategic Objectives 2000-2005 'Shaping the New Europe'. COM(2000) 154 final, 9 February 2000 - hereafter referred to as the Strategic Objectives.

such an understanding (in particular the focus on governance with the promise of a White Paper in the early part of 2001) but conclude that the foundations remain incomplete and unsteady and that the necessary linkages to the processes of institutional and administrative reform are not yet explicit.

The paper thus continues (section 2) with one possible account of the emerging policy environment, drawing out the trends to which the institutions must respond and allowing us to identify the main implications for the policy process – specifically the limitations of existing instruments and the consequent need for innovative methods.⁴ Building on this understanding, we go on (section 3) to try to identify the key features of such new modes of governance and then (section 4) to make some initial suggestions for the White Paper on governance.

Our view, in short, is that this is a time of unique opportunity for the Commission. Reform is underway and there is both the public expectation and the political will to sustain it. But the euphoria of action after inaction must not produce action for its own sake. Undue haste at this juncture may result in an unduly restricted view both of the nature of the problems and of the possible responses. There is a need, then, for calm reflection and for nerves strong enough to resist pressure for change which has not been located within the bigger picture of governance reform. If it is a time, therefore, of unique opportunity for the Commission, it is surely also a time of unique challenge.

The tone of caution apparent in the introduction may be a source of frustration for those who have waited long and patiently for concrete steps towards improvements in the legitimacy, effectiveness and efficiency of European governance. There is certainly no denying the progress represented by the IGC and by the White Paper on administrative reform. It is necessary, nevertheless, to be clear about just how much can be realistically expected from these initiatives.

1.2. The IGC on Institutional Reform

The level of resolve behind this initiative is immediately evident from the fact that it has both clearly defined objectives and a strict timetable. In this last regard the Helsinki European Council made a ‘firm political commitment to make every effort to complete [it] by December 2000’ with rapid ratification thereafter and implementation of the resultant reforms by the end of 2002.⁵ In order to be able properly to assess its objectives, we need to be clear about the preoccupations of the European Council meeting in December 1999. Confirming the importance of the enlargement process launched at Luxembourg two years earlier, it stated bluntly that ‘[a]n efficient and credible enlargement process must be sustained.’⁶ The commitment to a precise timetable for the IGC on institutional reform

⁴ Throughout the paper, we draw on ideas first articulated in the following papers: Notis Lebeisis & John Paterson (1997a) ‘Evolutions in Governance: What Lessons for the Commission? A First Assessment’; (1997b) ‘The Future of European Regulation’; (1998) ‘A Learning Organisation for a Learning Society: Proposals for ‘Designing Tomorrow’s Commission’; (1999) ‘Improving the Effectiveness and Legitimacy of EU Governance’ all in the series *Working Papers of the Forward Studies Unit, European Commission*.

⁵ Helsinki European Council, Presidency Conclusions, 11 December 1999 – hereafter referred to as the Conclusions – paragraph 5.

⁶ Conclusions paragraph 3.

and to ratification of the necessary Treaty amendments is therefore a function of the European Council's belief that the EU 'should be in a position to welcome new Member States from the end of 2002.'⁷ The agenda for the IGC can accordingly be understood as determined in large part by the institutional issues which must be resolved if the EU is to be able to operate efficiently with an enlarged - indeed almost doubled - membership. The list thus includes the so-called Amsterdam triangle (the size and composition of the Commission; the weighting of votes in the Council; and the possible extension of qualified majority voting) together with a catch-all 'other necessary treaty amendments in connection with the above issues and implementing the Treaty of Amsterdam.'⁸

All of this is unquestionably essential if there is not in future to be a completely unwieldy institutional structure continually bogged down in tortuous decision-making procedures. But there could be no serious suggestion that these changes will be sufficient if the Union is to integrate more members, many of whose political, economic, social and administrative histories are very divergent from the existing Member States. Of course, work proceeds at other levels to ensure that the relevant institutions and procedures in these countries are made compatible with those of the existing members. But as difficult as the adoption of the increasingly complex *acquis communautaire* will be for these prospective members, the question remains as to whether the envisaged process of accession is in any way as sophisticated as both the current crisis of legitimacy within the EU and the further diversity the new members will introduce demand. It must of course be acknowledged that the IGC has taken steps to cope with diversity insofar as it has broadened its agenda to consider the possible future use of reinforced co-operation – a mechanism already foreseen in the Treaty of Amsterdam and designed to allow certain Member States to proceed further and faster than others without subverting the *acquis communautaire* or fragmenting the internal market⁹. But the implementation of this mechanism remains a matter solely for the highest levels of intergovernmental co-operation and thus does not necessarily respond to the diversity internal to a given Member State.

It could thus be said that the reforms in prospect at the IGC are a necessary first step but that it remains to be seen whether other aspects of the process of governance - perhaps well below that which would require Treaty amendment or intergovernmental agreement - are in need of attention. Nor is such a question remote from the higher level of reform. Rather, it is intimately bound up with that process. While the resolution of the issues on the agenda of the IGC may indeed produce more *efficient* institutions, this does not necessarily say anything about whether they will be regarded as any more *legitimate* or whether they will be seen to be *effective* by those whom they ultimately exist to serve. In other words, improving the capacity to act does not necessarily improve the substantive

⁷ Conclusions paragraph 3.

⁸ See the Finnish Presidency Report 'Efficient Institutions after Enlargement: Options for the Intergovernmental Conference' (Council of the European Union 13636/99) 7 December 1999. The Helsinki European Council followed this report in deciding the agenda for the IGC (see the Conclusions paragraph 16). The subjects listed under 'other necessary treaty amendments' are responsibility of the members of the Commission; allocation of seats in and legislative procedures of the European Parliament; the problem of the workload of the ECJ and Court of First Instance; and possible reforms to other institutions and bodies.

⁹ Informal meeting of the IGC negotiation group, Sintra, 14-15 April 2000.

merit of the ultimate action. It is not obvious, for example, that the reforms in prospect will do anything significantly to address the perception that the European institutions are remote and undemocratic. Indeed, it is always possible that changes needed to accommodate an enlarged membership may be seen to dilute democratic legitimacy further. Nor do the planned reforms address the pressures placed on the policy process by an ever more complex environment and manifest, for example, in the increasing difficulty it experiences in coping with risk issues or in adequately representing the range of views and interests of which modern societies are composed. The increased diversity implied by enlargement merely serves, therefore, to add to the complexity of the environment confronting the European institutions. If the existing policy process is showing signs of strain in the face of complexity, it seems clear that enlargement will only add to the pressure for change. That being the case, the question becomes one of considering what further reforms need to be carried out and how they must be articulated with the highest level changes.

It needs to be recognised immediately that the Helsinki summit was not indifferent to such lower level reform. It approved, for example, the Council's recommendations for internal reform.¹⁰ Similarly, it recalled its commitment in support of reforming the Commission's administration in order to enhance efficiency, transparency and accountability and looked forward to the 'comprehensive programme of administrative reforms'¹¹ which that body has now produced in the form of the White Paper - the second reform process with which we are concerned.

1.3. The White Paper on Administrative Reform

The mass resignation of the Commission in March 1999 was a crisis in every sense of the word for that institution. It was, first of all, a moment of great difficulty whose importance cannot be overestimated. That the guardian of the Treaty had been found wanting to such an extent by the Union's most democratic body raised very profound questions about the way in which the Commission operated. It was also, however, a crisis in the sense of being a decisive moment, a turning point. The swift and unanimous response of the Member States to the resignation in the nomination of Romano Prodi as President was viewed positively by an expectant European public who shortly afterwards delivered a further wake-up call to the politicians and bureaucrats (if one were needed) in the miserable turnout at the elections to the European Parliament in June. These signals seemed, however, to have been received and understood. The incoming President made it clear from the outset with his early speeches to the Parliament that reforming the Commission would be a central concern of his period of office. And this promise was made good with the appointment of a Vice-President with specific responsibility for administrative reform, the swift publication of a Consultative Document¹² and the adoption of a White Paper on 1 March 2000.¹³

¹⁰ Conclusions paragraph 20. See Annex III to the Conclusions for the Council's reform proposals.

¹¹ Conclusions paragraph 21.

¹² 'Reforming the Commission: Consultative Document' Communication from Mr. Kinnock in agreement with the President and Ms. Schreyer CG3(2000) 1/17 18 January 2000 – hereafter referred to as the Consultative Document.

¹³ See footnote 2 above.

The reform process certainly appears ambitious and unequivocal. In the preface to the Consultative Document, a clear objective is identified: to ensure that efficiency, accountability, transparency, responsibility and service are universally applied within the Commission as working conventions.¹⁴ Then, encouragingly, the process was identified as having started with two questions which do not appear to impose any restrictions on the reforms that are possible: (a) what are the tasks and functions of the Commission in the years to come? and (b) what sort of organisation must it be in order to fulfil them?¹⁵ Despite such an apparently blank-sheet approach, the White Paper that emerged from the short consultation period is rather limited in its ambitions – its own proclamations to the contrary notwithstanding.¹⁶ The reform strategy proposed is composed of three related themes. The first of these does offer some hope (reform of the way in which political priorities are set and resources allocated) but the remaining two (changes to human resources policy and reforms of financial management) look relatively mundane – at least as they are presented in the White Paper. Dealing first of all with the latter two pillars, these can be very readily assessed: they represent the bare minimum in terms of human resources policy and internal financial management that should be in place in an organisation with the position and responsibility of the Commission and the fact that they can be presented respectively as ‘important’ and as ‘an overhaul’¹⁷ at the turn of the twenty-first century would be a cause for embarrassment if they were not so obviously and urgently required. Taken in the round, they betray an overwhelming concern with efficiency which, while commendable, is conspicuously not qualified by a commensurate concern with legitimacy and effectiveness despite occasional passing references. That brings us back to the first theme of reform concerning the allocation of political priorities. While the establishment of a Strategic Planning and Programming cycle with a key co-ordination role for the Secretariat General looks promising, the limitations of the other themes must raise doubts here too. And, indeed, the emphasis is again very much upon efficiency, with activity-based management, more efficient use of internal and external resources and more efficient, performance-oriented working methods being the key factors identified.¹⁸

Given the nature of the events of March 1999, however, it is not at all surprising to find that the Consultative Document manifests the emphases that it does. This merely serves to highlight the extent to which this reform process too is a *reaction* to a particular issue rather than a planned and measured development. There certainly were reforming processes underway before the crisis¹⁹ but the fact that they are hardly trumpeted in the White Paper speaks volumes for their adequacy in coping with the problems that eventually brought the College down - not to mention their utility in dealing with the more profound questions of legitimacy and effectiveness.

¹⁴ Consultative Document piii.

¹⁵ Consultative Document p1.

¹⁶ For example, ‘the scope and ambition of the reform programme far exceeds that of any previous exercise’ White Paper on Administrative Reform p2.

¹⁷ White Paper on Administrative Reform pp2-3.

¹⁸ White Paper on Administrative Reform pp4-7.

¹⁹ For example MAP 2000, SEM 2000, DECODE.

The extent to which the two initiatives considered so far are responses to rather narrowly defined crises or problems is, therefore, productive of relatively limited reform agendas. But more than that, the desire, indeed the need, to be seen to be responding rapidly and substantively to these issues leads to a relatively restricted view of the environment in which the institutions must operate. In the case of the IGC, the view is of enlargement understood principally in terms of the mechanics of decision making at the highest levels in the context of a possibly doubled membership. In the case of administrative reform, the view is of the fundamental shortcomings of the Commission exposed by the crisis of March 1999. In this respect, the Strategic Objectives of the Commission for 2000-2005 represent an important opportunity to broaden the view.

1.4. Shaping the New Europe 2000-2005

Published on 9 February 2000, the Commission's Strategic Objectives for the next five years were effectively the first opportunity for the Prodi Commission to set out its distinctive vision of the EU as it enters a critical phase of its existence, the previous months having been spent essentially coping with the immediate fall-out from the demise of the Santer Commission. This is, then, a crucially important document, but one nevertheless which only a couple of months later appears to have sunk from public view. This is all the more surprising given that the document is unequivocal about the priority in the years to come of *political integration*, a process which runs the risk of impinging most directly upon national sovereignty and of bringing to the forefront the vexed and vexing question of the true nature of the European project. Is the ultimate aim a United States of Europe? Is the progress unrelentingly towards a strong-form federalism, a European superstate? The relative public and media indifference in the face of a stated drive towards political integration is perhaps explained by the fact that the document uses no such language and more importantly seems to contain no such hidden agenda.²⁰ Instead the focus is very firmly upon a political integration which takes 'full account of...national and regional identities, cultures and traditions'²¹ and one which strikes 'a new balance between action by the Commission, the other institutions, the Member States and civil society' bringing 'Europe much closer to the people it exists to serve'.²²

Specifically, the Commission is proposing four strategic objectives for the next five years: promoting new forms of European governance; a stable Europe with a stronger voice in the world; a new economic and social agenda; and a better quality of life. Given our discussions in the foregoing subsections, it will be clear that it is the first of these objectives which is of greatest interest. But beyond our current concerns, it is also the case that the remaining objectives very much depend upon the first for their successful attainment. With these points in mind, therefore, we need to try to have a clearer idea of just what the Commission has in mind when it speaks of promoting new forms of European governance.

²⁰ It may also be accounted for by the fact that the period following the publication of the Strategic Objectives has been one of intense speculation about the position of the President himself – a matter apparently more to the media's taste than the substantive question of political integration. See especially *FAZ* 4 April 2000.

²¹ Strategic Objectives p3.

²² Strategic Objectives p4.

In particular, the attainment of this key objective is seen as related to five components: giving people a greater say in the way Europe is run; making the institutions work more effectively and transparently; adapting the institutions to the needs of enlargement; building new forms of partnership between the different levels of governance within the EU; and ensuring an active and distinctive European contribution to the development of global governance. It is immediately clear that this initiative is proactive in stance and broad in scope where the others discussed previously are reactive and narrow. Furthermore, it explicitly recognises the need for wider and deeper reform in the face of enlargement, as well as for legitimacy and effectiveness to complement efficiency more fully in the drive for change. It therefore possesses considerable potential with regard to the further development of the European project at this critical juncture. But what form will its contribution take? What is the Commission to do in order to promote new forms of governance? What are these new forms of governance in any case?

To all of these questions at present there appear to be no readily available answers. But given the degree of innovation presumably envisaged this is hardly surprising. What is in view is a White Paper due for publication in the spring of 2001 in which the Commission will clarify the content of this key strategic objective. It is our contention that this White Paper is precisely the place where the Commission can begin to address the limitations that currently beset reform: firstly, by developing a more adequately complex picture of the emerging policy environment than is visible in the narrow focus of the IGC or the process of administrative reform; and secondly, by developing a vision of the policy process that marks a break with the traditional models which currently restrict the range of reform options. This will be a complex and difficult process and one in which the Commission must try to engage as many stakeholders as possible. By way, however, of trying to establish some starting points and to provide some indications, we go on in the following sections to discuss some of the findings of the Governance Project with regard to these issues.

2. THE EMERGING POLICY ENVIRONMENT

2.1. A diagnosis of current problems

There is general recognition of the relevance of the European project when it comes to addressing global challenges such as sustainable development, North-South inequalities and related reforms of the international system. There is equally a desire for more European action in the field of common foreign and security policy (most recently manifested in relation to the Balkans) and with regard to issues such as migration and refugees, international crime, and so on. In each case, it is understood that concerted action at a level beyond the nation state is required if desired ends are to be achieved.²³

And yet the public perception of European action is often negative. This can be due to the fact that the debate on European issues is often heavily skewed by the interests of national politics, with European action being portrayed as ‘unnecessary interference’ in more and more areas of daily life. But it is also due to the fact that to a great extent the ‘democratic deficit’ has not yet been successfully addressed despite the express intentions of the framers of both the Maastricht and Amsterdam Treaties. Decision-making at the European level is all too often a matter for the opaque and confusing process of comitology which tends to favour a limited group of powerful and professionally represented actors in any given policy area. This leads to a situation where it is easy for European action to be portrayed as not being properly accountable and as lacking legitimacy.²⁴

Meanwhile, the public increasingly feels that their lives are being shaped by forces which appear to be outside the control of political actors whether at the national, European or international level. Problems in recent years such as the Asian financial crisis and a seemingly endless succession of food safety scares only add to the widely-held impression that the globalised economy and technological systems are following their own logics irrespective of the needs of individuals and despite the interventions of political actors. As a consequence, the political reliance on scientific and other expertise that has been a feature especially of the post-war era is increasingly called into question and doubts are expressed about ‘technical solutions’ which supposedly obviate the need for wider debate. There is accordingly ever greater scepticism about the ability of conventional political arrangements to produce detailed plans for medium- to long-term action and to implement them with any significant degree of success.²⁵

Closer scrutiny of the operation of the policy process has also raised further concerns which are not unrelated to this last point. The fact that there may be democratic representation at the point of formal decision making is seen to be inadequate where there are problems with both the earlier and later stages of the process - stages which are

²³ This is a recurring theme, for example, in Eurobarometer. See, most recently, Report No. 52 (April 2000), pp53-58.

²⁴ For a succinct discussion see Robert Baldwin and Martin Cave (1999) ‘*Understanding Regulation: Theory Strategy and Practice*’ Oxford: Oxford University Press Chapter 6. See also Ellen Vos (1997) ‘The Rise of Committees’ *ELJ* 210-229.

²⁵ See generally Ulrich Beck (1992) ‘*Risk Society: Towards a New Modernity*’ London, etc.: Sage and Anthony Giddens (1991) ‘*The Consequences of Modernity*’ Cambridge: Polity.

increasingly understood to be just as determinant of eventual outcomes. Thus, the predominance of experts and administrators – and, more worryingly, of an often very narrow range of represented interests - in the initial phases of the process where options are formulated can unduly restrict the choices to be considered at the point of decision making. Similarly, technocratic hegemony at the stages of the implementation and evaluation of policies can raise doubts about the extent to which decisions are responsibly translated into action and to which their effects are measured in terms which are meaningful to all interested actors.²⁶ It is all too easy to suggest, as a consequence, that accountability and legitimacy are increasingly a matter of public relations to sell a *fait accompli*, rather than key components of a political process.

It is evident, then, that however vital are the institutional reforms under consideration, they will not by themselves be sufficient to address this range of problems and concerns. Even if the IGC were to be extended to encompass, for example, proposed reforms which focus on the empowerment of the Parliament,²⁷ these would not address problems of legitimacy and accountability which are now understood to permeate every stage of the policy process. Nor indeed will any reforms guarantee the effectiveness of European action insofar as they fail to tackle the restricted views offered by technocratic understandings of the implementation and evaluation of policy. Europe needs to address issues of legitimacy and effectiveness in a comprehensive manner and must be prepared to consider new methods of achieving them beyond those suggested by traditional majoritarian parliamentary models.

While these are problems that also confront national level public actors, it is possible to identify a number of reasons why they particularly concern the European level - reasons associated essentially with the trajectory of the European project. Generally speaking, *the European project has followed a trajectory from negative to positive integration*. In other words, at the outset, the project was concerned to remove barriers to the establishment of a common market (such as tariffs) and to guarantee the four freedoms. As time went on, however, it became progressively apparent that the completion of a single market required active intervention in more and more policy areas which may not at first sight have been identified as representing barriers to trade but which, if left untouched, could allow Member States to enjoy unfair competitive advantages.²⁸

This is a significant shift, but it is a question whether the structure of the European policy process has adapted sufficiently to reflect it. At the outset, there were two complementary forces which encouraged an essentially *vertical structure*. On the one hand, Member States recognised the advantages in sharing sovereignty in areas where there were already

²⁶ A wide range of literature makes related points. See, in addition to Lenoble & De Munck, De Schutter and Ladeur in De Schutter, Lebessis, Paterson: *Governance in the European Union*, Forward Studies Unit Series, forthcoming volume, Gunther Teubner (ed.) (1985) *Dilemmas of Law in the Welfare State* Berlin & New York: De Gruyter; Jurgen Habermas (1984 & 1987) *Theory of Communicative Action* Cambridge: Polity Press and (1997) *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* Cambridge: Polity Press.

²⁷ See most recently 'From Confederacy to Federation: Thoughts on the Finality of European Integration', speech by the German Foreign Minister, Joschka Fischer, at the Humbolt University, Berlin, 12 May 2000.

²⁸ See Giandomenico Majone (1996) *Regulating Europe* London: Routledge.

significant interdependencies. On the other, and perhaps more importantly in the immediate aftermath of the war, there was a recognition among the political élite driving the project that it was important to achieve an institutional structure which provided *strong, centralised control* of these policy areas.²⁹ The independence of the Commission, for example, was crucial in maintaining a long-term European vision.³⁰ Similarly, the ECJ was active from the outset in establishing the pre-eminent position of European law vis-à-vis any contradictory national measure.³¹

For as long as the Community was concerned with issues of negative integration, this vertical and centralised structure was not subject to serious sustained challenge. Over time, however - and especially with the signing of the Single European Act in 1986 and the subsequent drive towards the completion of the single market in 1992 - the Community's involvement with positive integration developed exponentially.³² This shift has raised problems which have strained the vertical structure of the European policy process and exposed weaknesses in centralist arrangements which were crucial to the success of the early stages of the project.

As a consequence, decentralising pressures have built up on the Community. This was already evident, for example, in the principle of subsidiarity in the Maastricht Treaty³³ and reappeared in the banner under which the Amsterdam Treaty was drafted of 'bringing Europe closer to the citizen'.³⁴ And yet it seems clear that to date only limited progress has been made in achieving decentralisation to a degree and of a sort that meets either the expectations of civil society or the demands of complex problems. It is certainly true that the process of administrative reform within the Commission envisages greater decentralisation, but again the stated emphasis raises concerns about its responsiveness to the nature of the problem: '[e]xternalisation should only be chosen when it is a more efficient and more cost-effective means of delivering the service or goods concerned'.³⁵

Nor is it the case that the difficulties confronting the European policy process are associated only with its vertical and centralist arrangements. Problems also arise because of its *functional segmentation*. At all levels from the Council and the Commission downwards, administrative bodies are characterised by their division into a range of Directorates-General or ministries or departments, each responsible for clearly defined policy areas. The main aim of this arrangement is to *reduce complexity*. Instead of

²⁹ See Derek Urwin (1995) *The Community of Europe: A History of European Integration since 1945* (Second Edition) London: Longman.

³⁰ See John Fitzmaurice (1994) 'The European Commission' in Andrew Duff, John Pinder & Roy Pryce (eds.) *Maastricht and Beyond: Building the European Union* London: Routledge.

³¹ See Joseph Weiler (1981) 'The Community System: the Dual Character of Supranationalism' *1YBEL* 267.

³² See Joseph Weiler (1991) 'The Transformation of Europe' *100 Yale LJ* 2403.

³³ Now Article 5EC.

³⁴ See, for example, 'A Strategy for Europe', Final Report from the Chairman of the Reflection Group on the 1996 Intergovernmental Conference, Messina, 2 June 1995.

³⁵ White Paper on Administrative Reform p7.

attempting the impossible task of regulating the entire policy environment from the vantage point of one government actor, that environment is divided up into more manageable pieces and allocated to specialised departments. These departments can then develop the expertise necessary to solve the problems associated with their particular area, and the locus of responsibility for any given task is relatively easy to determine.

For public actors, this structure has been flexible enough to allow newly-arising tasks associated with the shift from negative to positive integration to be allocated either to existing or to newly-formed departments. At the level of the European project, for example, the establishment of a largely functioning market and the progress made towards the single currency are testament to the success of this approach to the management of complexity.

Nevertheless, the concomitant increase in the number and range of responsibilities lying with public actors has exposed the limitations of this vertical, segmented approach. In particular, while focusing on a given aspect of the policy environment serves from one perspective to reduce complexity and to render it more manageable, it can equally serve to *mask complexity by hiding the interdependencies which may exist between policy areas*. Such interdependencies may take the form either of *negative externalities* which because of an overly restricted focus at the point of policy formulation may only become evident when they are irreversible or at least very expensive to resolve (for example, the BSE crisis); or of *synergistic opportunities* which again may be missed at the outset because of an inability to appreciate a broader context and only recognised when the degree of policy implementation makes it impossible to take them up or to do so only with reduced effectiveness or efficiency (for example, the inter-relationship between transport and environment policy).

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

As a growing range of issues has come to be dealt with at the European level and as this development looks set to continue, policy conflict is likely to pose an increasing problem for the institutions. Such issues have in the past been dealt with on a reactive and ad hoc basis and it is by no means clear that the overriding efficiency focus of the current reform proposals will do anything to remedy this problem. There is, therefore, a need for a consideration of institutional options that are proactive, flexible and less restricted in outlook.

2.2. Implications for the Policy Process

The work of the Governance Project stresses that the current understanding of the European policy process, which focuses almost exclusively on the moment of decision-making, needs to be modified. The growing evidence of the pressures on the existing approach needs to be responded to in a proactive and systematic way rather than as at present on a reactive and ad hoc basis. In other words, the entire process from the framing of problems, through the formulation of policy, to its implementation, evaluation and

revision needs to be opened up and liberated from the shadowy world it currently inhabits - civil society needs to be engaged in and by European action.

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

Such an approach denies the policy process the benefit of the full range of available expertise and knowledge as well as of a better informed and engaged civil society. It will thus remain the case that policy is seen to emerge as a compromise among the limited set of actors who dominate a particular field, rather than on the basis of consensus or co-operation among all of those who are actually affected, irrespective of whether they have traditionally been recognised as having an active role to play.

There is a need, in short, to abandon ideas of central planning and control which years of experience have revealed to be entirely unrealistic and to rest on inadequate understandings of the policy environment. Instead of being obsessed with the control of outcomes which in any event escape the best intentions of public action, attention should shift to the control of processes which aim to enhance the responsiveness of public action to the nature of the environment in confronts.

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

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

These findings further highlight the importance of the Commission's promotion of new forms of governance as a priority among its strategic objectives. They also draw attention to the fact that the work of the IGC on institutional reform and the process of administrative reform within the Commission will only be meaningful if they are set in the broader context of such an understanding of the policy environment and not unduly restricted by their immediate concerns. Enlargement will only serve to increase the strains

on legitimacy and effectiveness if it is not accompanied by appropriate reforms at all stages of the policy process rather than simply at the institutional decision making stage. The reformed Commission may be more efficient but it needs to consider the relevance of those reforms to the new forms of governance it seeks to stimulate as well as its place within the resultant architecture.

The potential importance of the White Paper on governance therefore becomes all the clearer. The White Paper on the completion of the single market was the defining act of the Delors Commission and the driving force behind the significant progress that has been made since the mid-1980s towards economic integration.³⁶ If similar progress is to be made towards political integration, the forthcoming White Paper will have to provide the driving force and thus become the defining act of the Prodi Commission. The difficulty, as we noted above, is that it is not yet clear what the Commission has in mind when it talks about promoting new forms of governance. In this regard, the diagnosis and implications presented in this section can perhaps provide some indications – at least of the broad themes the White Paper might address. In the following section, therefore, we present some of the key features of new modes of governance that emerged from the Forward Studies Unit's project. To be clear, these features are not intended as a blueprint or as an exhaustive list. Rather they are offered by way of stimulating debate in a field where by definition there will be little existing material or experience on which to draw as Europe strives to define new ways of coping with the political challenges thrown up the increasingly complex policy environment.

³⁶ COM(85)310.

3. KEY FEATURES OF NEW MODES OF GOVERNANCE

Given the lack of clarity about what is implied by new modes of governance mentioned at the end of the foregoing section, we might usefully preface our discussion of what we see as their key features with an attempt to define the word 'governance'. Without this, we will not know what is properly our concern – and indeed the concern of the forthcoming White Paper on this subject. We can state first of all and quite straightforwardly that, for us, governance is concerned with the organisation of collective action. Now, clearly, a wide variety of alternatives could be subsumed under this very brief definition and we would need, therefore, to be more specific about what we understand by organisation and by collective action. In this regard, we find ourselves very much in agreement with the more elaborated definition of governance provided by Calame and Talmant:

Governance is the capacity of human societies to equip themselves with systems of representation, institutions, processes and intermediary bodies in order to manage themselves by intentional action. This capacity of conscience (the intentional action), of organisation (the institutions and intermediary bodies), of conceptualisation (the systems of representation), of adaptation to new situations is a characteristic of human societies.³⁷

In the foregoing section, we have essentially attempted to offer initial answers to two broad questions. What is the nature of the emerging policy environment? What are the implications for the policy process? In this section, we build on the answers arrived at and, through a series of sequential though inter-related steps, try to develop a set of key features which appear to be indispensable to modes of governance which are aimed at responding to the new understanding of the context of public action. Because of this development in a series of inter-related steps, the key features need to be understood as mutually supportive components in an overall framework, rather than as 'pick and mix' accessories for more traditional policy mechanisms and instruments.

3.1. Overcoming limited understandings of problems

For reasons both of effectiveness and of legitimacy, there appears to be a need to escape from the constraints imposed on the policy process by the current emphasis on expert or bureaucratic constructions of the problems that are perceived to require intervention at the level of public authorities. Insofar as this emphasis allows only a narrow understanding of problems to inform the policy process, there is a danger, first of all, that their full nature will not be appreciated (including the possibility that problems may be overlooked entirely or may be overstated) and, secondly, that the solutions developed to deal with them will prove ineffective or counterproductive to the extent that they produce unforeseen side-effects.

Apart from this basic question of effectiveness (with all that it implies for efficiency, particularly in the medium to long-term) there is also the question of legitimacy. If citizens routinely perceive that the expert and bureaucratic definition of problems, desired objectives and means of achieving them are remote from their concerns, then the legitimacy of that public action is seriously undermined. At one time, of course, it would have been possible to point to a periodic democratic mandate to justify action by public

³⁷ Pierre Calame and André Talmant (1997) *L'Etat au Cœur: Le Mecanno de la Gouvernance* Paris: Desclée de Brouwer, p19.

authorities. Whether this mandate, offered as it is to the legislature, was ever truly sufficient to cover the delegation of authority to lower and less obviously accountable levels of government, it is increasingly understood to be woefully inadequate in the context of ever more diverse societies and of the complex tasks now confronting public actors.

This is hardly a new observation and governments have for long undertaken various forms of consultation as part of the process of developing and implementing policy. The difficulty is that this consultation has frequently been a relatively hidden process conducted with an established list of comparatively well-organised and well-funded groups representing often quite narrow interests. Thus, in promoting new forms of governance the Commission needs to ensure that it does not simply follow a well-trodden path and repeat current practices which, while formally open and inclusive, are in fact closed and exclusive. Overcoming the constraints of narrow bureaucratic and expert constructions of problems and solutions means taking seriously the need to break the cartels of representation and consultation which currently exert a covert stranglehold on key stages of the policy process.

The issue of overly restricted views of problems is not, however, confined to the division that can exist between expert and lay knowledge. Bearing in mind the contribution of Ladeur* in this volume, the fragmentation of knowledge that is characteristic of modernity extends to - and indeed is most marked insofar as it relates to - the division between different types of expert knowledge. The problem of overcoming limited understandings is thus as much one of overcoming the limits imposed by expert disciplines and the shift away from current consultation practices must accordingly reflect this fact as well.

3.2. Guaranteeing wider participation – sensitivity to context

If this break from current limited practices of consultation is to be achieved, new forms of governance will need to include guarantees about the participation of stakeholders. It should be clear from what was said at the end of the foregoing subsection that ‘stakeholder’ must be understood broadly here. In other words, the term is not intended here in the sense that it has come to embody in everyday speech - that is, as a shorthand for those areas of civil society habitually excluded from direct involvement in policy decision making. Instead it is meant literally, to encompass *all* of those who have a stake. Thus, not only are the experts and bureaucrats from within the policy area traditionally associated with a particular issue included, together with those actors from civil society that a more enlightened regulatory approach might bring in, but also experts and bureaucrats from other policy areas, other disciplines who are understood to have a stake in the context of a policy process which acknowledges interdependencies.

Seeking to ameliorate the problems of narrow understandings of problems is not, therefore, about displacing expert opinion in favour of its lay counterpart. This would rightly be subject to criticism. It is, however, about taking seriously the nature of the scientific process which underlies expert opinion and incorporating the implications into the policy process. In particular, the concern is with the fact that the scientific rationality

* Karl-Heinz Ladeur, ‘Proceduralisation and its Use in a Post-Modern Legal Policy’, in De Schutter, Lebossis, Paterson *Governance in the European Union*, Forward Studies Unit Series, forthcoming volume.

produces *knowledge* not *certainty*, and with the fact that this knowledge is not absolute but rather provisional and inherently and necessarily subject to ongoing testing, revision and even replacement. As a consequence, the policy process needs to be able to accommodate not only the possibility that expert opinion may be wrong or perhaps only relatively right, but also the probability that different expert disciplines deploying the same scientific rationality will conceptualise issues in different ways. In other words, it needs to be able to cope with the fragmentation of knowledge that is an ever more important characteristic of the emerging policy environment.

If we are not advocating the displacement of expert opinion in favour of lay opinion, but are nevertheless concerned with the limited understanding of problems that the former can impose on the policy process, we need to be clear that we do not see improvement only in the better integration of different expert disciplines. Despite our insistence on a proper understanding of the scientific process and on the status of the knowledge it produces, we nevertheless insist also that it remains the best means at societies disposal for the production of knowledge. Accordingly, lay opinion that is brought to the policy process without the underpinning of scientific must be treated with due caution. But it must not simply be dismissed out of hand as has happened in the past. There are a variety of ways in which it can make a contribution. At the most basic level, for example, it might represent further empirical information. It might also assist experts in developing more targeted and understandable communications with civil society. More importantly from our point of view, however, is the opportunity it provides for a more meaningful exchange, a mutual enhancement of competing perspectives - not just an education of civil society, but a means of forcing expert opinion to justify and explain the assumptions and causal connections of the models it deploys. We will elaborate on this point in section 3.4 below.

What this acceptance of plurality leads to is a need for the policy process to be sensitive to context – what is appropriate for one context may not be suitable for another. Whether we are primarily concerned with legitimacy, effectiveness or efficiency, we will surely agree that the blanket implementation of policy irrespective of contextual specificities is unlikely to produce a result that could be positively evaluated. To work these points through to their conclusion: the content of public action aimed at the attainment of outcomes deemed socially desirable cannot be pre-established outwith the context of application and other than with the collective involvement of *all* of those with an interest – expert and lay alike, and irrespective of who has been included in previous approaches.

3.3. Taking account of inequalities

If the policy process is to operate so as to accommodate a plurality of views beyond those of traditionally-involved public actors and existing habitual consultees, and is to be sensitive to context, then there will be an attendant need to ensure that those coming into the process for the first time are not disadvantaged by their relative lack of organisation and resources. If this issue is not addressed, then the result would be similar to many current consultation processes where there is a formal universal right to participate which nevertheless presupposes a certain minimum level of material and cognitive resources possessed in fact only by certain actors. New forms of governance, therefore, will at the most basic level need to take account of any inequality of resources and make allowances accordingly.

Beyond that most basic level it may also be appropriate to consider the ways in which active steps may be taken to compensate less well-resourced stakeholders, perhaps by

offering material help or perhaps by providing access to neutral expertise. This may seem to some to be a rather radical step, but it can be seen as analogous to the situation in all Member States where, if individuals involved in litigation lack the means to provide legal representation, the state will step into the assist. Understood in this light, the idea of active support for stakeholders in the definition of problems and the development of solutions - issues which may affect them as much as litigation - appears much less extreme.

Quite how this assistance would be directed, however, is at this point an open question and there may be legitimate fears that what is being proposed could sow the seeds of increased debate - and perhaps even litigation - over issues about which there is in principle no reasonable disagreement. We need to move on to the next step, therefore, to achieve some greater clarity about the nature of the policy process which until now has been characterised mainly by the need to consider more viewpoints and to get more stakeholders actively involved. How is the process constructed from new forms of governance to operate? How is its basic approach to be understood?

3.4. Encouraging collective learning

If we return to the point made above about the provisional nature of scientific knowledge, it is frequently the case that such a suggestion provokes a defensive reaction from the public actors and experts who have been its traditional champions. They have tended, as we said, to equate the knowledge generated with certainty, and thus to justify the removal of questions treated in this way from the realm of politics. If the outcome of research whether in the realm of social policy, economics or technology is certain, then there is simply no need to debate it. So runs the traditional argument. For one thing, non-specialists will not be able to understand the processes involved. For another, the debate will be useless because the result *must* be the same as that produced by research if the development and implementation of policy is not to be subverted by irrationality. When we insist, to the contrary, on the *provisional* nature of the knowledge produced, and also upon the *fragmentation* of knowledge that is such a striking characteristic of the emerging policy environment, this traditional approach appears increasingly inadequate - and, more importantly, indefensible from a strictly scientific point of view.

What, then, are the implications of such a recognition for the policy process itself? Accepting that there is now no privileged viewpoint in the sense that none can claim to have an unquestionable understanding of problems, objectives and means, it seems immediately apparent that reform must seek to increase opportunities for collective learning. What we understand by this last idea is more than just negotiation and compromise. Opportunities for collective learning would need to encourage an acceptance of the necessarily incomplete and provisional nature of any perspective brought to a given interaction and seek to facilitate a mutual critique of those perspectives by the various stakeholders whether expert or lay. This might take the form of obliging stakeholders not only to formulate their position explicitly, but also to explain the effects of that position on other stakeholders and on other aspects of the problem that they bring to light. Different stakeholders, both expert and lay, would, in other words, be required to demonstrate the coherence of their constructions, not only in terms of their initial position but also in terms of the positions of others which have emerged as part of the process of collective learning.

This process has implications for both effectiveness and legitimacy. The first relates to the fact that each perspective must learn from the others if there is to be an adequate understanding of the problems in hand. This does not mean that one or more perspectives

cannot simply be wrong. It means only that there is no pre-judgement in this regard, but rather that there can only be such an assessment on the basis of a reasoned discussion. Overcoming the limited understandings of existing approaches thus involves informing expert opinion with lay judgement to the extent that that is appropriate and equally assisting other perspectives to understand the reasoning behind expert findings and their impact. It also means, of course, in the context of fragmented knowledge, assisting mutual learning between different expert understandings of given issues.

Far from representing a threat to scientific expert rationality, a collective learning approach offers a significant opportunity to bolster it by ensuring that it does not close off options unduly on the basis of untested assumptions and by engaging stakeholders who are otherwise suspicious and even sceptical. This leads on to the second implication of the collective learning approach, the fact that by bringing bureaucratic and expert decision making back into the political process in a way which is not obstructive to it but rather enhances it in terms of effectiveness, also offers the possibility for increased legitimacy.

To be clear, this emphasis on collective learning is not at all about producing a definitive account of problems and solutions (a point explained further in the next subsection). Rather, it is a question of establishing processes which allow for the ongoing enrichment of each representation. The essential aim of such collective learning opportunities is to attempt to enhance communication among diverse rationalities which increasingly seem to be mutually indifferent or to 'talk past' each other. To that extent, the aim is to move towards a common language which can maintain a coherence that is otherwise threatened.

3.5. Ensuring ongoing evaluation and revision of policies

The recognition of the importance of collective learning discussed above, implies that the implementation of policies cannot be regarded as a one-off exercise. Learning, after all, is not an activity that is limited by time but rather must be regarded as ongoing. It is therefore necessary to put in place mechanisms which ensure meaningful ongoing evaluation of policies and their ultimate revision on the basis of the information generated by such evaluation.

In the same way that we saw the benefits that could accrue from seeking to increase opportunities for collective learning at the stages of problem-setting, the definition of socially desirable objectives and the choice of means, so the stages of evaluation and revision could be enhanced by a similar approach. At present, it is too often the case that the criteria of evaluation are the product of the same expert or otherwise closed processes which define the initial problem, the consequent objectives and the choice of solutions. There is accordingly a risk that these criteria will produce evaluations of implemented policies that are even more remote from the concerns of other stakeholders or significantly at odds with an adequate understanding of the problem at hand. Similarly, irrespective of the quality of such evaluations, the results are too often simply consigned to the shelf instead of being fed back into the process of revising policies. If the evaluation and revision of policies was enhanced by opportunities for collective learning, both of these problems would be reduced - the quality of evaluation would be improved and there would be no opportunity for a lack of feedback. Again, there are obvious effectiveness and legitimacy gains to be had from this approach, to say nothing of improvements in efficiency. The increasingly obvious difficulties facing public actors as they seek to plan in detail for the range of issues that fall within their area of responsibility must act as a strong incentive for the systematic use of enhanced evaluation and revision mechanisms to maximise the quality of the information available and its impact upon the policy process.

The ideas of evaluation and revision as they are discussed here can serve to enhance the function of memory that is already performed by public actors. Institutions and rules essentially act as a collective memory, crystallising knowledge at a given point and acting as a basis for future action. These institutions and rules are, of course, subject to modification on the basis of ongoing experience, albeit that this is frequently a slow and reactive process. In the context of the emerging policy environment described above however, characterised by an ever increasing rate and scope of change, by a fragmentation of knowledge and by a growing awareness of the interdependency of problems and issues, there is a need to increase the opportunities for such modification - specifically in ways which can respond to these characteristics. Seeking to enhance the evaluation and revision of policies by means of a collective learning approach is a means of responding to this need.

3.6. Improving policy coherence

The recognition that collective learning is a key response to the difficulties thrown up by the emerging policy environment has further implications for ways in which the policy process might be enhanced. Problem and objective-setting, the choice and implementation of means, and the evaluation and revision of policy must not focus solely on a given policy domain. Rather, steps should be taken to ensure that these different stages of the policy process in a given domain are aware of the impact of decisions taken on other policy areas. It is already the case that the more inclusive approach envisaged above – encompassing broader expert and lay input – will heighten the likelihood that trans-boundary or cross-cutting problems will be identified and incorporated into decision making. But this cannot be left to chance. Rather, new modes of governance need to address the question of policy coherence from the outset and build in procedures for ensuring that negative externalities and synergistic opportunities are identified and acted upon.

3.7. Collective learning and a new understanding of control and responsibility

Collective learning is clearly the overall theme connecting the key features of new modes of governance discussed above and this has implications for the way in which public actors understand their precise role. In particular, the control aims of governmental action are shifted away from the top-down definition of ends and means and towards the establishment of and support for inclusive, participative procedures oriented towards collective learning.

There is no question of public actors no longer being concerned with the attainment of objectives. It is simply that these must come to be understood as collectively-generated and inherently mutable goals which are expressions of a contextualised rather than of a general will which in any case is increasingly understood to be more symbolic than real. Nor is there any diminution or dilution of responsibility as regards public actors. As guardians of a policy process understood as being enhanced by opportunities for collective learning, the location and the weight of responsibility are as clear and as onerous as ever.

4. BRIDGING THE GAP BETWEEN CITIZEN AND EUROPE: THE KEY FEATURES AND THE WHITE PAPER ON GOVERNANCE

Can we then, on the basis of these first steps, move on to offer some more concrete indications for the Commission as it begins to prepare the White Paper on Governance? In this section we follow the same steps, identifying some examples of specific problems that it appears the Commission will have to address and attempting to suggest some solutions in terms of the key features. We should emphasise that this is not intended as an exhaustive list; the examples are purely illustrative and intended as a contribution to the general debate on governance stimulated by the announcement of the White Paper.

4.1. Improving the opportunities for and quality of public debate on European issues

The need to escape from the confines of expert and bureaucratic understandings of policy problems, objectives and solutions was identified as the first step on the road towards the development of new modes of governance, for reasons both of legitimacy and of effectiveness. Guaranteeing the participation of stakeholders was proposed as the second step, ensuring that *all* of those with an interest or a contribution – whether expert or lay – should be able to contribute to the policy process. This key second step, however, risks being of limited impact if no attempt is made to bridge the widening gap between expert and bureaucratic institutions on one hand and civil society on the other. In other words, the specialisation and sophisticated resources which characterise the former put them at a significant advantage over lay stakeholders with the consequent risk that any guarantees of participation become merely formal. While no area of politics is immune from this problem, it is clearly one which particularly afflicts the European level. If the traditional structures of representation which are supposed to ensure contact between public actors and citizens are perceived to be inadequate – and indeed in crisis – at the national and even local levels, how much more is this the case at the European.

In seeking to address this problem, reform is hampered insofar as there is a continuing tendency to speak of a ‘democratic deficit’ and thus to seek inspiration for reform in the nation state model of representative democracy. The problem, however, runs much deeper than this much-used phrase indicates and consequently requires a similarly more profound response. Rather than a democratic deficit, it seems to us to be more accurate to speak of a more fundamental *deficit of mutual awareness* between civil society and public authorities and accordingly more appropriate to focus the reform process on options aimed at addressing this problem. As we noted above, there is at the most basic level an urgent need to improve the level of public awareness of the major themes of European policy and to provide opportunities for civil society to contribute to their development – and this is an area where new modes of governance can play a significant role.

The Dialogue on Europe exercise³⁸ designed to engage the public in the institutional reform process is an excellent example of such an approach and, quite apart from the knowledge and information it will generate for the process of reform, careful study of its implementation can yield valuable lessons for the White Paper on Governance. Similar –

³⁸ ‘Dialogue on Europe: The Challenges of Institutional Reform’ Memorandum to the Commission from the President, Mr. Barnier and Mrs Reding, in association with Mr. Verheugen, adopted 15 February 2000.

and indeed more ambitious and ongoing – projects in the future would appear to be a key way of ensuring that the gap between public actor and civil society continues to narrow and that the problems of overly restrictive perspectives are minimised. Failure to adopt such a second-order approach means that there is a danger of the Dialogue on Europe becoming a notable one-off exercise in participative governance, merely a product of the fortuitous conjunction of the IGC and the publication of the Strategic Objectives.

Without pre-empting the outcome of any such study, we might at this point try to identify the sort of issues that the Commission should consider in the context of the White Paper on Governance and the sort of mechanisms it might propose. It would seem, first of all, that it is necessary to address the question of how European issues can be brought *systematically* into the public eye and their relevance made *tangible* to civil society. This will not be a simple task, nor will it be one that is amenable to one-off, quick-fix solutions. Rather it is one that will require a long-term commitment and involve the institution in seeking to take full advantage of a range of opportunities to engage with civil society. There are at least two major considerations to be borne in mind in this regard. The first is that, at present, the public in any Member State are often confronted with news of ‘Europe’ only when EU policies are perceived by local politicians or media to conflict with national, often short-term, interests. The second consideration is that the European agenda, insofar as it is presented at all at Member State level, is frequently perceived to be complex and remote from everyday concerns or to be disproportionately concerned with essentially trivial problems. Consequently, the White paper on Governance needs to address these issues and look for ways to overcome them.

As regards the first consideration, it may be fruitful to examine ways in which national debates on issues of common concern could be better aligned in terms of timing and of themes. This would involve making better use of the opportunities presented by the media and by information technology. Such an alignment would restrict the chances of important issues being reduced to short-term national concerns and allow the European dimension to emerge with greater clarity. The emphasis on new information technology evident in a range of Commission initiatives should be refocused so as to support such an aim rather than being a response only to efficiency concerns. It is important to appreciate, however, that this aim to improve the visibility and understanding of the European dimension at the Member State level is not simply about improving the quality and targeting of information flowing from public actor to civil society. If legitimacy and effectiveness are to be enhanced there has to be both an effort to ensure the genuine relevance of European policy to the concerns of civil society at every level and a willingness to engage in dialogue, in establishing the basic channels of communication that will allow for the collective learning that lies at the heart of new modes of governance. These observations bring us back to the second consideration mentioned above.

As a step towards democratising the relevance of the European agenda, it would be helpful to concentrate on establishing clear and explicit links between it and important events on the global stage such as WTO meetings and climate conferences. Such an approach would have the advantage of demonstrating the relevance of EU policy to such questions as climate change and globalisation which are among the highest priorities for European civil society. It would also possess the advantage of emphasising the importance of the EU as a global player, again strengthening its position as against narrower interests. Apart from the link with new modes of governance, this would also be a key means of furthering progress as regards the second strategic objective. Among existing developments which could be drawn upon in this regard are recent efforts to achieve

‘structured dialogues’ – for example in relation to social, environmental and trade policy.³⁹

But combating perceptions of complexity and remoteness is not just about making explicit the links between the European agenda and the global level, it is equally importantly about connecting that agenda with national, regional and local levels in ways which allow citizens to feel that they are engaged in the policy process. This perhaps presents the greatest challenge to bodies such as the Commission because it involves the possibility of coming into conflict with the sensitivities of political and public actors at those levels. Whatever the means by which civil society is engaged, therefore, they must seek to achieve an articulation with all levels of public actor and utilise the resources they offer. Among the initiatives that may assist in commencing this process of engagement between the different levels might also be the establishment of more regular meetings on general policy issues such as the Annual Conference proposed by the Parliament.⁴⁰ In order to ensure a collective learning orientation, the organisation of such meetings should be characterised by openness and participation.

Progress in this direction can also be achieved by building upon the emerging trend at national, European and international levels to make use of more innovative means and channels of representation. A key point to note, however, is that this trend is often the result of crises which have served to highlight the shortcomings both of existing policy processes and of emergency response mechanisms – there has been widespread dissatisfaction with the degree of secrecy and with the unwillingness to listen to public concerns which have characterised these processes.⁴¹ In such circumstances, therefore, public actors such as the Commission should be more ready to promote the use of ad hoc representative or consultative mechanisms on specific issues of concern such as citizens’ conferences, deliberative opinion polls, citizen’s juries, public hearings, focus groups and forums. It is more important, however, to realise that crisis situations are very frequently the result of a lack of appropriate information that other stakeholders could have readily provided, an overly narrow focus on the part of the policy process, an unwillingness on the part of experts to look beyond their immediate concerns or to admit of other viewpoints, and so on.

It is also possible to improve the quality of information available to the ongoing policy process by enhancing monitoring and early warning resources throughout Europe. Without such capacities, there is a danger that the European agenda will more often be reactive than proactive, with all that such a situation implies for efficiency as well as for any other measure of the success or failure of policy. The Parliament or the Commission could be envisaged as playing a part in the fulfilment of such a role, where they would aim in particular to enhance two aspects of the development of policy. First of all, in seeking

³⁹ See the examples cited in the recent draft discussion paper produced by an interdepartmental working group of the Commission, ‘The Commission and Non-Governmental Organisations’: Building a Stronger Partnership’, Brussels, 13 March 2000.

⁴⁰ Resolution of the European Parliament (A4-0338/96).

⁴¹ Perhaps the key example is the case of the Brent Spar which has been acknowledged to be a turning point in government and industry thinking in the involvement of civil society in such issues. See the House of Lords Select Committee on Science and Technology, Third Report April 2000 and Tony Rice & Paula Owen (1999) *Decommissioning the Brent Spar* E & FN Spon.

to improve the quality and quantity of data available, and as a means of providing a better perspective for current choices, these institutions should focus upon a long-term vision for policy to act as a counterweight especially to politically- and economically-driven short-term goals. Secondly, they should seek to reframe problems, issues and questions in ways which transcend the boundaries of the currently segmented policy process, with a view to revealing their frequently cross-cutting nature. In each case, the amount of resources required to carry out such a role meaningfully would be beyond what is available to either institution. It would be a case, therefore, of their seeking to animate networks of actors at Member State and perhaps lower levels as a means of increasing the level of resources available, while simultaneously ensuring broad and deep coverage for these monitoring and early warning capacities throughout the EU.

4.2. Improving the transparency and openness of European policy making

As regards the question of guaranteeing the participation of especially lay stakeholders, there might be a temptation to suppose that this is a relatively simple matter of establishing some basic rights of audience. In order to be meaningful, however, and bearing in mind always the overarching concern with collective learning, the guarantees must be more far-reaching. First and foremost, we are concerned here with improving the transparency and openness of the policy process. For as long as these issues are not properly addressed, civil society will continue to feel disengaged – indeed disenfranchised – from European action. In considering new modes of governance therefore, there would appear to be a need first of all for the EU institutions to consider a *general policy of transparency*, with more systematic use of a range of media, especially information technology, to ensure that precise and straightforward details about the European policy process are easily available to civil society.

Among further steps to be considered in this regard could be the adoption by the EU institutions of a *general policy of inclusion* which would guarantee the systematic involvement of representatives of all affected interests at all stages of the policy process from the framing of problems to the evaluation and revision of policies. This would be a significant move and one that would not be without considerable difficulty, but the onus should be upon those opposing such a step to make their case rather than vice versa – and it ought by now to be clear that considerations only of efficiency should not be regarded as a sufficient reason to block a policy of inclusion. To repeat, enhancing the capacity to act is no indication of an enhanced quality of action.

Beyond these initial steps, and in order to seek for ways to support them, it would be instructive for the White Paper on Governance to include consideration of relevant experience in the US – a jurisdiction with a relatively long history of administrative procedures which appear both relevant to our immediate concerns and generally more developed than their European counterparts. To be clear, it would not be a matter of slavishly following US administrative law in every detail but rather of seeking to draw appropriate lessons from both positive and negative experiences in that jurisdiction.

The precise lessons to be drawn would, of course, be a matter for those drafting the White Paper and for the process of consultation it initiates. Significant among them, however, might be the value of formalising certain basic rights which could underpin the broader developments in the policy process entailed by the promotion of new forms of governance. Such basic rights might include those of information, consultation and expression. These would be linked to corresponding obligations on the part of public actors, such as the requirement to give reasons for decisions (explaining the grounds on

which they have been reached, explaining why any representations have been disregarded, etc.). While these rights already exist to a greater or lesser extent in many Member States, and indeed at the European level, the impact of their formalisation in a new European Charter of Political Rights should not be underestimated. Again it would be possible to point to an existing development in order to suggest that progress is already being made in this regard. The Report of the Expert Group on Fundamental Rights⁴² is a sign of the EU's commitment to protecting especially the rights contained in the European Convention on Human Rights. It should be clear, however, that we have in mind a broader set of rights than those immediately mentioned by the Expert Group – albeit that this would by no means be beyond what the ultimately envisage as emerging insofar as they see the initial specification of rights only as an intermediary act paving the way for further completion. In particular, '[t]he guarantee of rights must be seen as open process, based on dialogue within civil society and responding to new challenges.'⁴³ In this regard, the Aarhus Convention⁴⁴ provides useful guidance on how rights relating to access to information, involvement in decision making, and so on, could be added so as to enhance the ECHR list in ways which would support a collective learning orientation for the policy process. That such an enhanced Charter would by no means be alien to the EU is evident from the fact that, relating as it does to environmental issues, the EU institutions will be subject to the correlative obligations when the Aarhus Convention comes into force, probably in 2001.

In addition to such a Charter, the passing of a Framework Act codifying common principles for regulatory authorities at European and national levels, as discussed by Dehousse* in this volume, would constitute the concrete implementation of these rights and obligations as regards public actors. The uniformity offered by this approach would assist transparency insofar as it would provide fixed reference points for the public to assess the decisions of authorities responsible for formulating and implementing European policy.

A further lesson that might be drawn from such an examination of US experience might be the utility of adopting a form of negotiated rulemaking.⁴⁵ Again, there are certainly indications that the experience is not all positive but the opportunity would be there to examine the possibility of promoting the positive aspects while seeking to minimise the negative. And, of course, while the US presents a particularly rich and obvious source for such examples, this is by no means to say that there are none comparable within the EU – at both the European and at Member State levels. For example, in the social domain, a

⁴² 'Affirming Fundamental Rights in the European Union: Time to Act' Brussels, February 1999.

⁴³ *Ibid.* p4.

⁴⁴ 'The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters' adopted at the fourth Ministerial Conference "Environment for Europe", Aarhus, Denmark, 25 June 1998.

* Renaud Dehousse, '*European Governance in Search of Legitimacy* : The Need for a Process-Based approach' in De Schutter, Lebessis, Paterson '*Governance in the European Union*', Forward Studies Unit Series, forthcoming volume.

⁴⁵ Negotiated Rulemaking Act 1990 (5 USC sections 561-570) supplementing the rulemaking provisions of the Federal Administrative Procedure Act 1946 (5 USC section 553).

number of directives have emerged from what is essentially a process of negotiation among the social partners. While this, therefore, represents a step towards the kind of approach envisaged by new modes of governance, it needs to be recognised that questions as to the representativeness of such actors remain, as well as questions over sensitivity to contexts. A further example, which is frequently cited as indicative of the successful involvement of a fuller range of stakeholders in the development of policy, is that of the process which led to the auto-oil directives.⁴⁶ It should also be mentioned in this respect that the concept of co-regulation has recently been advanced as a means of ensuring both that the general public interest is maintained and that flexibility is permitted in the definition and implementation of policy goals.⁴⁷ There is clearly a resonance between these aims and the message of this paper, and we would propose that new modes of governance and hence the White Paper are seen as part of the exploration of these ideas that the proponents of co-regulation urge.

The physical implementation of any such proposals would no doubt require new mechanisms and there would be implications for the role and function of each of the European institutions. It is important to stress that although the White Paper is a Commission initiative, new modes of governance clearly impact upon all stage and levels of the policy process and will thus call for changes in the other institutions. In terms of the implementation of basic rights and obligations, therefore, it would be possible to envisage that the Economic and Social Committee and the Committee of the Regions, for example, could be given a role of regulating consultation processes, channelling communication between civil society and the institutions. A role as procedural regulator could be envisaged for the Committees of the European Parliament, while the European Court of Justice and the national administrative courts could be given the task of enforcing procedural rights and obligations.

Many of these proposals would require Treaty amendment, but that is not a reason to exclude them from the White Paper on Governance. On the contrary, they are commensurate with the degree of ambition revealed by the Strategic Objectives as regards political integration and with the degree of renewal required if the European project is to cope with the emerging policy environment. It may no doubt be felt that such proposals which potentially involve in some cases a significant shift in the operation of the policy process, risk inflaming Eurosceptic opinion in certain Member States. But the White Paper can in fact be an opportunity in this respect to build bridges. Much that is pejoratively dismissed as Eurosceptic is, on closer analysis, criticism of precisely the sort of issues that new modes of governance seek to address. There is accordingly a chance for traditionally Europhile and Eurosceptic opinion to come together in a project which at first sight may appear divisive. After all, developments which aim to enhance transparency, accountability and access must surely be as attractive to those Member States who are sometimes characterised as reluctant Europeans as to those who are frequently identified as belonging to the core.

⁴⁶ For a convenient review, see *European Dialogue*, May-June 1999, Issue 3.

⁴⁷ In this regard, see now the recent paper 'Meeting policy objectives through co-regulation at community level' Cab/Services ECOM34.

4.3. Redressing material and cognitive inequalities

Of course, providing civil society with rights of participation and imposing corresponding obligations on public actors only goes so far towards ensuring that new modes of governance address the deficit of mutual awareness that exists between the two sides in the policy process. There remains the question of differential resources, both material and cognitive.

In seeking to deal with this question, it should not be assumed that less-advantaged stakeholders are already in existence as relatively easily identifiable entities, and organised to a greater or lesser extent. It may be the case that, as an issue arises, important stakeholders are not at all organised, and may not be at all well-informed about the potential impact them. Redressing material and cognitive imbalances may therefore, first and foremost, involve public actors in assisting the emergence of stakeholders as organised entities in order that they may make a meaningful contribution to the policy process.

The possibility of dealing with material inequalities by means analogous to legal aid was discussed in the foregoing section, and it is possible to develop this idea with some more concrete examples. There is at present, for example, a debate within the Commission about the possibility of financing the core activities of certain NGOs.⁴⁸ This would certainly go some way towards redressing imbalances in some cases, but leaves open the question of the legitimacy and accountability of such groups. In this regard, first steps are being taken by the Commission towards the publication of a list of NGOs, detailing such information as where the organisation derives its funding, who are its principal officers, and so on. The availability of such information would assist in decisionmaking about which organisations might properly receive funding. A further possible answer to this question is provided by Schmitter.⁴⁹ In particular, he proposes a voucher system in which citizens would be able to influence the allocation of public finances to those groups they would prefer to see taking an active part in the policy process. Again, the availability of information about the background and operations of NGOs would appear to be indispensable to such a system.

There are, then, possibilities for the redress of material inequalities but we must also consider ways in which cognitive differences could be addressed. In this regard, there a number of options which could be included for debate in the White Paper on Governance. Here we will look specifically at the use of prospective studies and the development of pluralistic scientific expertise.

In order to further clarify the importance of developing the new modes of governance implied by the White Paper, it is worth emphasising here that such enhancements of the cognitive resources available to civil society would also have a direct impact on the achievement of the third and fourth strategic objectives. In other words, we should be clear that the White Paper is not just about promoting new modes of governance for their

⁴⁸ See note 39 above.

⁴⁹ Philippe C. Schmitter (2000) *How to Democratize the European Union...and Why Bother? (Governance in Europe)* Rowman and Littlefield Publishers Inc.

own sake but about developing the means required to deal effectively with the most pressing issues confronting Europe.

4.4. Opening up the process of expert and bureaucratic decision-making

We noted earlier that there is a growing recognition that the traditional reliance on technical fixes and expert solutions which preclude democratic debate serves frequently to mask problems which may then emerge in a catastrophic form. A series of events (such as global warming, the difficulties associated with nuclear waste management and a succession of food safety scares) has revealed the limits of this approach and emphasised the extent to which apparently technical problems are intimately related to vital political choices. Encouraging the development of pluralistic scientific expertise would help to improve awareness of scientific uncertainties and assist in the more open deliberation of collective choices. At issue in this regard is the need to develop a culture of risk in which the priorities are to address unequal risk distributions and to ensure that risk-related activities and research pay attention to the societal concerns and needs expressed in open political processes rather than to those imputed by experts and bureaucrats in confidential procedures behind closed doors.⁵⁰

Pluralistic scientific expertise is, therefore, needed essentially for three reasons. First of all, it is required in order to make scientific decision-making more responsive. To be clear, it is not a question of holding scientific rationality hostage to irrational fears and unfounded concerns. Rather, it is a matter of *reconnecting* science and society as a means of coping with such fears and concerns. Secondly, such a pluralistic approach is needed in order to help transcend the boundaries of segmented scientific expertise. It is a truism that experts in different and even closely-related disciplines often find themselves unable to communicate with each other because of the ongoing specialisation and differentiation of science. There is no way that this process can be reversed as it is the inevitable attendant of progress. Indeed, insofar as such progress is socially desirable then it would be counter-productive to even attempt such a reversal. It does, however, have an undesirable side-effect in that progress within the confines of one specialised discipline may be carried out in ignorance of unintended knock-on effects elsewhere. The aim, therefore, is to improve communication between disciplines. Whether between such disciplines or between science and society, the third reason that pluralistic scientific expertise is needed is precisely to encourage the systematic exposure of unspoken or even unexamined assumptions and uncertainties underlying both expert and lay opinion. The aim is thus to render political those choices which have traditionally been regarded as a matter purely for experts, irrespective of the extent of their ramifications and the scale of their error costs.

It is thus possible to make out a rather strong case for the development of pluralistic scientific expertise. The question then becomes one of how it might be implemented. This is certainly a matter for careful consideration, but whereas it might at one time have been extremely controversial to suggest any intrusion of the lay into the scientific, experts are now increasingly aware of the extent to which they have in many cases lost the trust of the public and are much more willing to seek for solutions. Some examples can be given from recent developments in the UK and in France. First of all, hybrid mechanisms involving both expert and lay input could be so structured as to influence the dynamics of scientific knowledge development. In this regard, a range of options is reviewed in a recent report

⁵⁰ See note 25 above.

by the UK House of Lords Select Committee on Science and Technology, including consultation at the different levels of government, deliberative polling, standing consultative panels, focus groups, citizens' juries, consensus conferences, and so on.⁵¹ Secondly, following especially from the work of Philippe Roqueplo, public procedures could be established which would permit expert testimony to be given in a court-style setting where each side would be able to question competing expert opinions, and the information produced could be fed into the policy process to enhance the quality and acceptability data available. The aim in each case is to improve communication between science and society by encouraging the exposure of assumptions mentioned above and to make political the choices that have been reserved to experts. As Roqueplo clarifies, the idea is not so much to reach the truth (which he describes as practically a mission impossible), but rather to open a public space which contains the truth.⁵²

4.5. Supporting collective learning

All that has been discussed so far will count for nothing, however, if new modes of governance are not structured in such a way as to encourage collective learning – the unifying theme of all the key features discussed in this paper. In circumstances where it is increasingly understood that predictability and detailed planning are problematic, ideas of centralised control are recognised as unrealistic and give way to a new focus on the need to co-ordinate collective action. This in turn places the emphasis on communication among different rationalities, perspectives and contexts – where communication is understood as a genuine mutual critique of positions involving a requirement to take account both of the impact of other perspectives on ones own position and vice versa.

In addition to the ideas discussed in the foregoing subsection where the focus of attention is communication between lay and expert rationality or between different expert disciplines, progress can also be made insofar as an exchange of experiences is encouraged between different contexts, as suggested by Calame. He observes that we are often essentially confronted by *generic* problems which affect us all, but in *specific* contexts which each imply individual aspects and particularities. The specificity of contexts can both obscure the structural components of problems and demand carefully adjusted responses. This tension means that on the one hand there can be a failure to fully comprehend the underlying nature of a given problem which is common to all contexts while on the other an understandable desire to respond to those aspects of a problem which appear most pressing in a specific location. There are obvious efficiency and effectiveness implications of any failure to resolve this tension. What Calame proposes, therefore, is to approach problems first of all at the local level, attempting to describe the essential features of the given context without attempting to be exhaustive. As a means of seeking to distinguish between those characteristics which are purely contextual and those which are structural, the task is then to compare the information produced by different contexts. This examination allows the basic questions which make up the essential problem to be discerned and refined, while simultaneously retaining the information on the diverse ways in which those questions have been answered. The net result is thus a better picture of the common structural components of a given problem as well as a range of

⁵¹ See note 41 above.

⁵² Philippe Roqueplo (1997) *Entre savoir et décision, l'expertise scientifique (Sciences en Questions)* INRA Editions.

illustrations of how they might be addressed, without of course attempting to prescribe solutions. Common principles can accordingly be developed and a shift can be made away from the command and control notion of the obligation of means towards an obligation of outcomes - where this is understood as an obligation to respect these common principles, rather than as indicating a fixed substantive result.

Further progress towards promoting collective learning would be achieved by the formalisation of basic rights and obligations discussed above – especially such obligations as reason-giving. There is no question, however, that this vital aspect of new modes of governance poses one of the most significant challenges to the future development of the policy process. It should, therefore, have a prominent place in the White Paper with a view to raising its profile and seeking to stimulate debate on existing experience, best practice, innovative approaches, and so on.

In addition, as we will suggest below, it will be difficult to increase opportunities for collective learning unless and until such an approach is systematically adopted by public actors as between different policy areas. It is accordingly the case that a key role in developing and promoting a collective learning approach will be played by the Commission itself as it seeks to orient itself as a learning organisation.

4.6. Developing collective evaluation and revision of policies

If prospective studies and pluralistic scientific expertise can enhance the information deployed in the development of policy, independent evaluation can ensure that when the impact and effectiveness of that policy comes to be examined, the criteria to be tested are meaningful to affected actors. It can also assist in achieving greater transparency in the policy process as a whole and equally make it less likely that evaluation results are left to gather dust but rather are fed back into the process to inform the revision of policy. In this regard the proposals made by the Parliament for an independent office to carry out evaluation should be closely examined in the context of the White Paper on Governance.⁵³ To be clear, such an office would have the role of encouraging, supporting and co-ordinating evaluation throughout the EU, rather than attempting the impossible task of carrying it out centrally, and would also be involved in overseeing methodological coherence.

There are, of course, already examples within the Commission of developments which seek to improve information provision and to achieve pluralist approaches to evaluation. In addition, these practices have been progressively enhanced by methods such as Green Papers, new modes of involving socio-economic actors in the formulation of research objectives, and so on. But these remain ad hoc and often one-off exercises entered into at the discretion of the Commission. A more systematic approach can assist not only in enhancing the evaluation and revision of policies, but also in developing the collective memory adequate for the emerging policy environment. In this regard, the Commission might well be able to draw lessons from successful organisations of longer standing.

What is required, in sum, is a more developed consideration of the ways in which Europe can be brought closer to civil society by providing opportunities for ongoing active and

⁵³ European Parliament (1997) *La participation des citoyens et des acteurs sociaux au système institutionnel de l'Union européenne* Exposé des motifs et Résolution A4/0338/96.

meaningful engagement throughout the policy process on a more systematic basis. Such an approach, implying a more deliberative orientation, can allow legitimacy and accountability to be achieved on a continuing basis. At the very least, the systematic development of these tools would allow best practice to be diffused throughout the EU. The White Paper on administrative reform in discussing the Strategic Planning and Programming function emphasises the importance of the proper use of ex ante and ex post evaluation⁵⁴ but there is no mention of the concerns raised here about the quality, source and relevance of that information. These should, therefore, be among the key issues to be considered in the context of the White Paper on Governance.

4.7. Achieving policy coherence

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

Given the understanding developed in section 3 of how policy coherence is achieved (as a matter of concern at all stages of the policy process from the formulation of choices through to the stages of evaluation and revision) and given the Commission's particular role in this process, this is an issue of fundamental importance for the White Paper. The proposals for the regrouping of responsibilities already made by Mr. Prodi⁵⁵ indicate a recognition of this problem but it is a question whether these will allow sufficient flexibility to deal with, for example, opportunities and problems that emerge unexpectedly as between regrouped broader policy areas. Furthermore, elements of the process of administrative reform offer some potential in this regard, notably Strategic Planning and Programming. As we indicated earlier, however, the emphasis appears to be very much upon financial and efficiency considerations, a narrowness of focus that could further exacerbate segmentation while appearing to ameliorate it. Addressing this issue will therefore involve a consideration of further alternatives.

A key example would be the systematic use of the cross evaluation approach where one policy is evaluated from the point of view of another. This entails the development of programmes, objectives and indicators in each policy area which demonstrate how other policy objectives are taken into account, synergistic opportunities are sought and acted upon, and early warning of negative externalities is ensured. In other words, collective learning is applied to the relationship between policy areas. In this regard, the developments regarding environmental policy (including the requirement in the Maastricht Treaty that other sectors give an account of their environmental orientation and specify which instruments and indicators they have developed to achieve it) should be closely examined with a view to applying this approach in a more systematic manner. The fact

⁵⁴ White Paper on Administrative Reform pp5-6.

⁵⁵ The groups created are as follows: growth, competitiveness, employment and sustainable development; equal opportunities; reform; interinstitutional relations; and external relations.

□

that the Cardiff summit already took steps to encourage these developments and that similar requirements now also apply to consumer protection and employment provide a clear indication of the importance of this type of reform. The White Paper on Governance is an opportunity to examine how these developments are operating in practice and to seek to stimulate a collective learning understanding of their implementation.

Beyond this example drawn from existing EU level experience, it would also be instructive to consider initiatives at Member State level which seek to enhance policy co-ordination. The UK government's report on such co-ordination issues, for example, lists a series of actions which are aimed at improving 'the formulation and management of cross-cutting policies and services.'⁵⁶ These include: achieving appropriate leadership from senior political and administrative actors to create a culture where a cross-cutting approach is encouraged and rewarded; improving policy formulation and implementation by engaging other stakeholders; and developing appropriate skills in public services by improved human resources policy.

4.8. Enhanced vertical and horizontal articulation in the policy process

We concluded section 3 by suggesting that the collective learning orientation which unites new modes of governance has implications for the questions of control and responsibility as they apply to public actors. It is a matter now of seeking to offer a somewhat firmer indication of what such a modified understanding of these dimensions could mean as the Commission prepares the White Paper on Governance. The ongoing debate about subsidiarity provides a useful context in this regard – albeit that a full discussion of the links between new forms of governance and subsidiarity is well beyond the scope of this paper.

Those who have championed the idea of subsidiarity over recent years might indeed claim that they are somewhat in advance in responding to the motivations behind this paper, and that the concept is already a means of coping with the emerging policy environment we have outlined above. Stressing as it does the relationship between the different levels of government, there are certainly superficial similarities between subsidiarity and the new forms of governance discussed here. The differences between them, nevertheless, seem to us to be more important. Most strikingly, whereas proponents of subsidiarity often seek to produce a catalogue of competencies or a clear division of labour (and thus an essentially Taylorist version of the concept), the approach adopted here emphasises the difficulties associated with any such hierarchical rigidity. It focuses instead on the means required to facilitate both vertical and horizontal articulations more flexibly and responsively. In other words, whatever benefits subsidiarity might offer as compared to an overly-centralised and top-down approach, its inherent rigidity risks exacerbating the problems associated with segmentation and the narrow focus of expert and bureaucratic rationalities highlighted here.

New modes of governance are, therefore, more in tune with the notion of *active* subsidiarity discussed by Calame* in this volume. Whereas the traditional form effectively

⁵⁶ 'Wiring it Up: Whitehall's Management of Cross-cutting Policies and Services' Cabinet Office, Performance and Innovation Unit, January 2000, p5.

* Pierre Calame, 'Active Subsidiarity: Reconciling Unity and Diversity' in De Schutter, Lebessis, Paterson 'Governance in the European Union', Forward Studies Unit Series, forthcoming volume.

presupposes the ability to divide tasks on a once-and-for-all basis, and thus to plan in detail on the basis of readily identifiable problems and straightforwardly implemented programmes, active subsidiarity recognises the need for a more modest approach. As mentioned above, therefore, in place of an obligation with regard to *means*, the focus is on an obligation with regard to *outcomes*, where this is understood as an obligation to respect common principles rather than to reach substantive results. Accordingly, in place of rigid problem-setting, the aim is to establish mechanisms fundamental to the policy process which facilitate an ongoing exchange of experience and thus a flexible and responsive posture in the face of the complex and dynamic policy environment.

The aim of such an approach would be to seek for a collective agreement on the conditions for success of public action, and thus to achieve a policy process characterised both by the wide range of perspectives apparent in modern society and by ongoing opportunities for each of those perspectives to be enriched through interaction with the others. Such an *active*, as opposed to a Taylorist, approach to subsidiarity is better able to produce the flexibility necessary to accommodate the diversity of contexts and the ongoing modifications of framings that are defining features of the emerging policy environment. In this way, there is a chance to ensure that a dynamic equilibrium is maintained between standardisation on the one hand, and context-specific solutions on the other.

In this regard, despite the apparent preference for a ‘catalogue of competencies’ approach to subsidiarity that is evident at different levels of government within Europe, there are already examples of an approach much closer to the active subsidiarity suggested by Calame and developed here especially in terms of collective learning. This is not to suggest that they are pure examples of this approach, but rather that they suggest a move in that direction which might usefully be continued. We can mention especially in this respect the structural funds. Their operation was explicitly intended to be a matter of the collective construction of policy through ongoing vertical and horizontal interactions between public actors and social partners. Further, recent developments in European social policy (such as the co-ordination of employment policy) indicate a shift away from an approach based on the imposition of top-down solutions and towards the development of policy in an organised process of the exchange of experience.⁵⁷ Again, then, the White Paper is an opportunity to examine past and present experience in terms of new modes of governance and to assess the extent to which promising ideas have been realised in practice.

⁵⁷ See, for example, ‘Community Policies in support of employment’, Communication from the Commission, COM(2000) 78, 1 March 2000.

5. CONCLUSION

Reform is very much on the agenda of the EU as it faces up to the prospect of enlargement and as it comes to terms with the shortcomings of the past. A key message of this paper, however, is that the process of reform must not be restricted by the issues that happen to dominate for the time being. Coping with enlargement and responding to the problems that have beset the Commission are vitally important exercises. They do not, however, represent the totality of what will need to be done if the institutions - at all levels - concerned with the development and implementation of European policy are to be able to operate effectively and accountably, as well as efficiently, in the emerging policy environment.

Characterised by the fragmentation of knowledge, diversity, an ever increasing rate and scope of change and complex interdependencies, the environment confronting public actors and civil society and of which they form a part will require a broader vision which incorporates existing reform processes and articulates them with more far-reaching exercises. In this regard, the White Paper due in the spring of 2001, represents a perfect opportunity for the Commission to launch the debate required to begin the process of developing the new forms of governance that can be designed from the outset to cope more adequately with these complex demands.

Drawing on the discussion instituted by the Forward Studies Unit on the question of governance in recent years, this paper has attempted to outline the key features of the new modes of governance that might serve to complement the existing structures of the policy process in ways which can achieve such an improved accommodation. Linked by a common theme of seeking to increase opportunities for the encouragement of collective learning, such new modes of governance can be characterised as being concerned with:

- overcoming the limited understandings of problems which appear to be at the root of many of the difficulties faced by public actors, masking as they do both negative externalities and synergistic opportunities between policies and contexts;
- guaranteeing and supporting the participation of stakeholders as a means of enhancing the setting of problems and objectives, and of developing and implementing solutions;
- improving the communication between different expert disciplines, not least with the aim of enhancing coherence among policies; and
- developing the process of evaluating and revising policies to reflect this emphasis on overcoming narrow expert approaches by enhancing exchange among all stakeholders whether expert or lay.

In short, new forms of governance are about seeking for ways to improve the articulation between the different levels of government (vertically) and between different policies and contexts (horizontally). In this regard, they are characterised by flexibility rather than rigidity since they focus on the need to facilitate the exchange of experiences among all of the different actors who have an interest in the policy process. Existing methods of developing and implementing European policy have served the Community and the Union well, but they need to be complemented and enhanced if the momentum they have built up is to be continued in a setting where traditional politics and government struggle to

accommodate growing complexity and diversity. The forthcoming White Paper is a key opportunity to move the debate forward in this direction.