CONGRESS026342

CONGRÈS DES POUVOIRS LOCAUX ET RÉGIONAUX DE L'EUROPE
CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF EUROPE

COUNCIL   CONSEIL
OF EUROPE   DE L'EUROPE

$S\partial2$

Strasbourg, 14 February 2001

CG (8) 29
Part II

EIGHTH SESSION

Draft opinion of the CLRAE on the European Commission's White Paper on European governance

Rapporteurs : Risto Koivisto (Finland), Halvdan Skard (Norway)

EXPLANATORY MEMORANDUM

On 25 July 2001 the European Commission published a White Paper (COM(2001)428) which is both an end result and a beginning.

It is the result of a long process of preparation and dialogue, one of the starting points of which was a seminar arranged by the European Commission's Forward Studies Unit with a view to creating the conditions for meaningful contact between experts on and day-to day practitioners of European governance. The aim was to adopt a new approach to the European Union's problems with its governability, caused by its unusual development process which has led to the superposition and diversification of institutions, a distinctly impenetrable decision-making process, and a feeling of distance between Europe and its citizens whereas European integration was supposed to be in their interests.

The Paper is also a beginning, in that it is intended to launch a broad consultation process running until 30 March 2002.

The initial seminar, the proceedings of which were published in 2001 in the "Cahiers" of the European Commission's Forward Studies Unit, was held some time ago, on 20 December 1995, with a view to fostering a general discussion on "transformations in the art of governance".

In other words it was the European Commission's own difficulty in grasping, through the traditional conceptual frameworks of constitutional and administrative law, how the machinery of the European Union actually functions, that prompted it to seek out potential solutions in unexplored areas. It was also forced to do this by the realisation that certain taboo terms such as "political union", "federalism" and the "Europe of regions" could not be pronounced for fear that if they were referred to or emphasised too much they might hinder rather than encourage European integration. As a result, the White Paper is somewhat "functional"[1] in nature. Furthermore, the old pragmatic ideals of Europe's founding fathers and some of the initial aspirations of the most loyal advocates of European integration prompted the emergence of an altogether different construct from that of traditional nation states lending itself to the need for a transformation in the relations between citizens and governments which could already be seen in the institutional and political turmoil following the end of the Second World War.

This approach seemed both somewhat abstract and ambitious. However, it has to be said that it also made it possible for the Commission to attempt to make progress at the only practical level, namely the day-to-day running of the Union, pending a shift in the political debate in which people had refused up to that point even to mention the word "constitution". The latter has only really emerged in the debate on Europe in the last few months.

There is also a need to address the question of whether the Commission's approach is in keeping with the preparation for the 2004 intergovernmental conference, where a more traditional constitutional approach seems to have been adopted through the conclusions of the Nice conference. It will be recalled that this is the first conference to have addressed the idea of the distribution of powers between the Union and the states head on.

Building on these foundations, the Commission has prepared this White Paper in which it establishes what it calls "principles of good governance" and proposes a series of changes arranged under the following four section-headings:

---

[1] The only real exception is the section in which the authors look into the way in which the Union might "apply the principles of good governance to its *global responsibilities*" although the first step should be to "reform governance successfully at home".

- "better involvement";
- "better policies, regulation and delivery";
- "the EU's contribution to global governance", and;
- "refocused policies and institutions".

It is clear therefore that, strictly speaking, the White Paper is aimed at improving the functioning of the European Union itself; although it does not concern the Council of Europe directly, there are some aspects which should be looked at more closely, particularly in the first section where there is talk of increased "*interaction with regional and local governments*", establishing "*more systematic dialogue with representatives of regional and local governments through national and European associations at an early stage of policy shaping*", and "*bringing greater flexibility into how Community legislation can be implemented in a way which takes account of regional and local conditions*".

Before going into more detail about the Commission's proposals, some of which cover issues common to all national or intergovernmental organisations, we need to discuss the notion of governance and consider to what extent this concept actually addresses current concerns.

We must then go on to consider to what degree the texts and resolutions already adopted at the Congress's instigation might solve the problems highlighted by the Union and serve as a potential means of getting local and regional authorities more involved in the European debate, while also drawing attention to the need for them to be more closely involved in the member States' decision-making processes[2].

I.   THE CONCEPT OF GOVERNANCE

Governance is currently a very fashionable word and the speed with which it has taken hold in various circles - reminiscent of the immediate popularity of the word subsidiarity - reveals in itself the disarray of political administrators or even political thinkers when faced with a social and institutional change which fails to conform to the normal rules. Although we are bound to welcome the emergence of the new universal concepts reflected in these new words, we should not adopt them fully without attempting to establish what they mean and considering to what extent they may help us to realise our main goal, namely **to nurture and consolidate political links in our increasingly complex societies which are also characterised, it has to be said, by a tendency for economic considerations to take precedence over political and social concerns.**

The word governance is borrowed from the vocabulary of political science, in particular some very recent theories of political science coming mainly from America, and covers a field extending well beyond the ideas addressed by the European Commission[3]. It would seem that the invention of the word is directly associated with the idea of global government, which economic change and the interdependence it has brought about now make conceivable, whereas it used to

---

[2] It should be recalled nonetheless that one of the Congress's main features and assets is that its members include not only representatives of the local and regional authorities of the European Union but also those of States parties to the Agreement on the European Economic Area (Norway, Iceland and Liechtenstein), whose legislation is now very much influenced by Community legislation, states that are candidates for membership of the Union, and states that have not yet applied or do not plan to do so (Russia) but inevitably aim to increase their links with the Union.

[3] Some ideas on the subject can be found in a special edition of the International Social Science Journal on governance published in March 1998. UNESCO – no. 155.

be nothing more than a utopian ideal. This brings us to Emmanuel Kant's idea of "cosmopolitan law" as a means of adapting to a society transformed into a federation of states forming a "global neighbourhood" which could not be based on government in the traditional sense but on a much broader concept that might be termed "governance".

Therefore it should come as no surprise that the first institution to have used the word was apparently the United Nations, with the aim of promoting "global governance". A report entitled "global governance" has been drawn up under its auspices.

The word "governance" has also been used, albeit in a narrower sense, in the activities of bodies pursuing mostly economic purposes such as the World Bank or the OECD. The OECD for instance has drawn up a strategic programme under the heading of governance resulting in a declaration on priorities in the field of governance for the 21st century.

The main sections of the OECD's work programme on governance issues give some idea of the extremely broad meaning that can be attached to the concept[4]: establishing of effective institutional and policy frameworks for markets and society; efficient management across levels of government (it was in this context that one particular study was carried out on metropolitan governance); managing cross-cutting issues and building policy coherence; fostering public sector capacity development; fostering integrity and combating corruption (a chapter which includes extensive discussion of taxation); even-handed management of the new types of relationship between government, business and civil society; and linking governance and economic development.

At international level the development of governance has frequently been equated with the adoption of private sector methods by the public sector which, as you will know, was one of the focuses of the local government reforms carried out in Britain in the 1980s. *Corporate governance* refers to a new method of corporate management which is more attuned to internal relations and an external environment affected by financial globalisation. This broadening of horizons has shifted from the economic and financial world to that of sociological research or political science at local, national and international level.

Hence, various institutions have the same feeling that the social and political environment is becoming increasingly complex, new players are beginning to emerge, and the local, national and international levels are becoming inextricably intertwined and this has led them to adopt the word governance to describe somewhat differing approaches which do nonetheless **have the following main aspects in common:**

- The first is an awareness that **the old rules do not apply to new circumstances.**

- The second is **the importance attached to the interaction between all those involved,** not only within the same sector but also within the organs of the state, civil society itself and, over and above this, the budding large-scale regional or global entities.

- The use of the word governance is also the **sign of an inability to grasp all of the phenomena at work and, above all, to channel them using traditional concepts** such as legislation or regulation, or the conventional methods of chains of command, which are hierarchical by their very nature and have been replaced by the concepts of "interaction" and "networking".

---

[4] To the point that we might question whether states were not already practising "governance" without realising it.

- This divergence from traditional legal concepts (which explains the oft-encountered term "soft law") was also combined with a trend which did not necessarily form part of the initial research work, namely a desire to define what some refer to as **"good governance"**. There seem to be "good" and "bad" ways of proceeding and it may not be a coincidence that the notions of good governance are mainly applied in relations with emerging countries or countries outside the organisations concerned. This has let in moral considerations which may be necessary but cannot be regarded in themselves as constituting a method of government.

- Finally, the concept of governance avoids dealing with the "content" of areas or fields of action and concentrates on **notions of "procedure" or "method"** (one of the most significant examples being the *"Community method"*); in other words it focuses on means rather than ends.

Therefore, although the concept of governance may be usefully applied in the debate on the institutional development of political organisations, **it is essential to focus on what it might actually consist of** rather than regarding it as a kind of magic formula helping us to deal with our freely acknowledged inability to deal with the real problems.

Furthermore, the meaning of the word has not yet been firmly established and you will still search for it in vain in any generalist French[5] or English-language dictionary. There is a somewhat vague understanding that the idea is to **go beyond government** but the concept has to be compared with existing notions, in particular those that are important when it comes to democracy, especially local and regional democracy, the future of which is naturally of concern to the Congress.

II.   COURSES OF ACTION LAID OPEN BY THE WHITE PAPER

The Congress's contribution forms part of the debate launched by the European Commission to look more deeply into the new methods of European governance. The discussion has been opened to the general public via a forum on the Commission's website and should continue until 30 March 2002. The Institutional Affairs Commission of the Committee of the Regions has taken a highly active part in the process, for example holding a number of seminars on the subject including one at the *Palais du Luxembourg* (the headquarters of the French Senate) in Paris on 29 November 2001. One of the main reference documents at this meeting was a report by Mr Michel Delebarre (COM-Inst.Aff./020, 26 November 2001). In early 2001 the Chamber of Regions had already been sent a discussion paper on the subject (CRP/CP(7)5) which was added to the agenda of the Contact Group with the Institutional Affairs Commission of the Committee of the Regions (CG/GT/CDR(8)4).

Some of the proposals relate to the **functioning of the European institutions and the Commission in particular**. However, they are also of direct concern to local and regional authorities, which frequently complain that they are not given sufficient consideration when it comes to framing European policies in Brussels or within their own national institutions.

---

[5] In old 13th century French, the word *gouvernance* was the name used for bailiwicks (or judicial districts) in Artois and Flanders.

Through what are referred to as "**refocused policies and institutions**", the Commission intends to do more to ensure that policies are consistent and identify long-term aims, thereby enhancing what might be termed the "intelligibility" of the Union's activities.

More interestingly, it also proposes to follow the subsidiarity principle introduced under the Maastricht Treaty and present "proposals to refocus executive responsibility on the Commission" at the next Intergovernmental Conference. It is worth noting that, in so doing, the Commission is reacting to the criticism that has often been directed against it that it acts as a kind of European technocracy, appearing to overstep the mandate it has been assigned[6]. This also turns the spotlight onto the responsibilities of the Council of Ministers which is requested to consolidate its decision-making powers and transcend sectoral interests. The paper also asks the European Parliament, as well as the Council, to focus more on defining the key components of policies and supervising their implementation. "It is time" says the White Paper "to recognise that **the Union has moved from a diplomatic to a democratic process**, with policies that reach deep into national societies and daily life".

The second aim – "**better policies, regulation and delivery**" – is entirely in keeping with the concerns expressed by local and regional authorities. To improve the quality of its external policy, the Commission reiterates **the need for action encompassing the notions of subsidiarity and proportionality**. "The Union must first assess whether action is needed and, if it is, whether it should be at Union level".

At the same time as accelerating the legislative process if it has to legislate, "it must find the right mix between imposing a uniform approach when and where it is needed and **allowing greater flexibility in the way that rules are implemented on the ground**". The Commission will simplify EU law further and **encourage member States to simplify the national rules which give effect to EU provisions.**

In one particular respect, it proposes a major rethink of decision-making approaches by advocating the creation of "new regulatory agencies"[7] which would be expected to devise rules adapted to specific fields.

However, the most important section for the Congress - as it is likely to affect the role of local authorities - is the one on increased participation and openness.

The Commission puts forward a number of ideas amounting to a series of statements of intent **which can apply to all public bodies** since they are notions of openness, participation, accountability (it is felt that accountability implies the need to explain actions better), and effectiveness (which presupposes clear objectives and, above all, impact assessment). The

---

[6] As a result, it has to be said, of the relative inertia of other European institutions, particularly the Council of the European Union.

[7] This approach may reflect a clear trend in some European countries, particularly France, to set up new bodies mid-way between the legislature and the executive called "independent administrative authorities" which are entrusted with regulatory tasks either in fast-changing technological fields (telecommunications, computing) or in sectors which call for impartial but technically competent arbitrators (audiovisual services, stock-market operations). These bodies or "commissions" often have the merit of including representatives of the sectors concerned among their governing bodies with the result that they are involved in decision-making processes.

Commission considers that this effectiveness depends on implementing policies in a proportionate manner and taking decisions "**at the most appropriate level**"[8].

Coherence is the level at which the regional and local authorities will have to be more closely involved in EU policies "to ensure a consistent approach within a complex system". The Commission regards these five principles merely as means of reinforcing those of proportionality and subsidiarity.

More specifically, **some of its proposals directly or indirectly concern local and regional authorities.**

"[Communicating] more actively with the general public on European issues". The White Paper makes clear provision for the delivery of information at national and local level "where possible making use of networks, grassroots organisations and national, regional and local authorities" and in particular by means of information and communication technologies. This could create a trans-national "space" where citizens from different countries can discuss what they see as the Union's main challenges.

More importantly, the Commission considers that it should be "**reaching out to citizens through regional and local democracy**". While noting that the expansion of the Union's activities over the last fifteen years has brought it closer to regions, cities and local authorities, the Commission acknowledges that the way in which the Union currently works does not allow for adequate interaction in a multi-level partnership: "**Regions and cities often feel that, in spite of their increased responsibility for implementing EU policies, their role as an elected and representative channel interacting with the public on EU policy is not exploited**".

The paper goes on to recommend that each member State should set up appropriate mechanisms for **wide consultation** when discussing EU decisions and implementing EU policies with a local or regional dimension so as "to listen to and learn from regional and local experiences". Finally, it considers that a complementary response is needed in three areas **to build a better partnership between the various tiers.**

Involvement in policy shaping to ensure that regional and local knowledge and conditions are taken into account. For this purpose it is suggested that systematic dialogue should be organised with European and national associations of regional and local authorities while respecting national constitutional and administrative arrangements.

Greater flexibility: "There should be more flexibility in the means provided for implementing legislation and programmes with a strong territorial impact". The paper also advocates an experimental approach in some cases, through "**target-based, tripartite contracts**" "between member States, regions and [local authorities] designated by them for that purpose and [by] the Commission". This pilot approach could be applied to environment policy but it is above all in the area of regional policy that the approach should be more decentralised.

With a view to enhancing policy coherence, the Commission would like the territorial impact of EU policies in areas such as transport, energy or environment to be addressed. Through

---

[8] There is some doubt as to what the most appropriate level might be and if, in some cases, it might be the regional or local level. If this were the case, this statement would imply some consideration of local and regional authorities whereas up until now they have not yet formed part of the EU's decision-making machinery.

consultation with its partners it will establish indicators to identify where more coherence is needed.

This new openness towards local and regional authorities is also accompanied by efforts to **involve civil society**, which is defined as including "trade unions and employers' organisations, non-governmental organisations, professional associations, charities, grass-roots organisations, [and] organisations that involve citizens in local and municipal life[,] with a particular contribution from churches and religious communities".

Thus, although the White Paper is intended to serve a mostly internal purpose, it does step outside these confines to outline new aspects of local and regional government involvement in EU policy-making. Accordingly, even if the purpose of governance was merely to support this process, this alone should mean that it has the support of the Congress of Local and Regional Authorities.

These prospects are also good reason for the Congress to point to the work that it has already done along these lines, albeit under another heading than governance, and give its opinion on how the aims set by the Commission might be realised.

III. CONTRIBUTION OF THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES

The first thing is to welcome the work of self-appraisal that the Commission is encouraging the European institutions to carry out. It reflects a refreshing awareness of the imperfections of the European integration process in terms of public perceptions[9] which has to be a positive thing.

Even more noteworthy is the fact that many of the changes proposed by the Commission will result, at least in theory, in an increased role for local and regional authorities in the framing of EU policies - a long-awaited sea change which began with the setting up of the Committee of the Regions.

It should be noted that the Commission plans to introduce more diversity in the way policy is implemented and recommends that this takes place "at the appropriate level", thereby apparently allowing for the possibility that policies may be implemented by local and regional authorities themselves (as is, at least indirectly, already the case today but has never before been formally acknowledged).

There are long-standing demands from local and regional authorities on these two points which were voiced for many years by the Standing Conference of Local and Regional Authorities and have now been taken up by the Congress. They were reflected in particular by a resolution of the Committee of Ministers of the Council of Europe on subsidiarity in 1995.

The Congress can only take note of these good intentions and reiterate the desire already expressed by the Committee of the Regions that they will be given more formal expression.

It goes without saying that this cannot be done without the agreement and active involvement of states. It would be a good idea therefore if, in the course of this debate on governance, national associations of local and regional elected representatives passed on the Congress's message to

---

[9] Perceptions which, if initial reactions are to be believed, may be improved by the introduction of the Euro.

their national governments so as to influence their views prior to work on the convention on European institutions and the next intergovernmental conference.

One possible proposal would be to enlarge the debate on powers to cover not just those of the European Union and the States but also those of the regions and possibly the local authorities. This would provide a common core which could serve as a basis for the development of local and regional self-government, particularly with a view to future enlargement.

More generally, some of the White Paper proposals might be used by local and regional authorities to encourage national governments to make the same kind of effort as the Commission, particularly when it comes to prior consultation but also as regards applying national rules in a manner which takes account of the diverse nature of local and regional conditions.

The Council of Europe's experience of contacts with countries outside the European Union, particularly the States parties to the Agreement on the European Economic Area[10] and the applicant countries, could also be taken into more serious account and partnerships could be set up for this purpose with the EU institutions. This matter could be added to the agenda of the next meeting of the working group with the Committee of the Regions, bearing in mind that the Delebarre report called for the latter to act at least as co-Chair with the Commission in meetings with national associations of local and regional elected representatives. Congress representatives may also wish to be more directly involved in the contacts and conferences organised directly by the Committee of the Regions with the applicant countries' associations of local and regional authorities.

It should also be pointed out that a large number of Congress members believe that the European Union should make reference, as the Committee of the Regions did for the first time in its report on subsidiarity, to the European Charter of Local Self-Government which, because of its sufficiently general wording to be applied in various situations, represents, in its own way, a point of reference on local governance.

The Charter might also be viewed as a model for the rules or principles that would be drawn up in relation with governance because it does not just set objectives but also lists certain areas and principles or sub-principles of application establishing the various components of genuine local self-government.

These positive elements, which were highlighted in particular by Mr Risto Koivisto, the President of the Chamber of Regions, as early as the beginning of 2001, should not however cause anyone to overlook **the risks** that such an ill-defined concept as governance poses **to the specific features of local and regional authorities and to democracy in general.**

The desire to put the emphasis on procedures or methods should not obscure fundamental matters such as the resources needed for local democracy to be effective.

In the same way, the desire to look beyond traditional institutions and set up a form of participatory democracy involving various members of civil society **should not lead to the kind of confusion that can cast doubt on the unique nature of political election by the citizens.** Listening to members of civil society is one of the main day-to-day tasks of local and regional

---

[10] The interparliamentary committee of the European Economic Area has already drawn the EU authorities' attention to certain distinctive features (M/20/R030-PE 308.518).

authorities and their role as forums for democracy and consultation should be asserted more forcefully. In this connection, the Commission gives a peculiar definition of what it calls the "Community method" and the role that it ascribes itself within this process. It claims to serve as a filter for "the general interest" by contrast with the filter for "democratic representation, European and national," which operates "at the level of the Council and European Parliament, together the Union's legislature". It seems at the least dangerous and somewhat presumptuous to give the impression that the legislative expression of democratic representation is less representative of the general interest – which it is after all supposed to reflect – than a body which is undoubtedly provided for in the EU treaties and a major contributor to the progress of the Community but whose members can hardly yet be regarded as the government of the Union and whose services are rightly or wrongly regarded as an embodiment of excessive administrative power precisely because the citizens do not have enough control over them. This technocratic[11] trend is also reflected in the importance attached to the consultation of experts which, albeit important and necessary, cannot replace the consultation of elected representatives.

It would also be unrealistic to think that universal participatory democracy involving civil society would improve the public's satisfaction with political decision-making. Conversely, it may well add an extra element of uncertainty into the decision-making process and, above all, frustrate particular interests rather than satisfying them. Like every legitimate political institution, local and regional authorities are constantly in the process of reconciling the conflicting interests inherent in all social processes. It is for this reason that, rather than engulfing their activities in those of a whole series of other subordinate bodies, we should be underlining their unique nature but also, and above all, providing them with all the necessary means for the shouldering of responsibilities that is the cornerstone of all genuine democratic systems.

Local and regional authorities should not just be involved in policy framing; they must be recognised as the fundamental models of democracy from which all the others stem and without which democracy itself would not exist.

Regarding the Congress itself, the question is **what lessons it can draw from the White Paper for its future actions:**

Should it also prepare a document on "good governance" of local and regional authorities? Admittedly, part of its mandate is to review local and regional situations and various models but it has also always maintained that there is no single or ideal model of local democracy. The desire to establish an ideal by these means shows in itself the limits of the notion of "good governance" in a society which claims to be and intends to remain diverse.

On the other hand, if the word governance were to enjoy success, perhaps the Congress could use it to draw together and put back into perspective the principles of the European Charter of Local Self-Government and the draft Charter of Regional Self-Government, **targeting States** and possibly placing more emphasis on their relations with local authorities. Once the general report currently being prepared on the structure of local government has been published, perhaps another general report could be planned on various consultation and participation procedures recommended by the European Charter of Local Self-Government and the Institutional Committee could be given the task of ensuring that they are applied in all the Council of Europe member States.

---

[11] Meaning government by technical "experts" as opposed to democratic government.