Chapter 1

The "Community Method": Chronicle of a Death too Early Foretold

Renaud Dehousse
Centre d'études européennes de Sciences-Po, Paris, FNSP

The 50th anniversary of the Treaty of Rome has been an occasion for many celebrations. On this occasion, many of the EU's accomplishments were attributed to the invention by the Founding Fathers of an original institutional setting, often referred to as the "Community Method". The basic elements of the model are well-known: the transfer of legislative powers to the EU, the creation of a "supranational" executive, the European Commission, the possibility of voting in order to adopt binding legislation, and the enforcement powers vested in the European Court of Justice. One of the most remarkable elements of that international regime has been its stability. Fifty years on, despite a significant enlargement of the number of member countries and several treaty revisions, it may be argued that the key features of the system have largely remained unchanged. The European Parliament has gradually acquired significant prerogatives, but there has been an attempt to prevent this evolution from altering the initial balance of power. Indeed, the need to preserve the essence of the Community Method is often used as an argument against proposed changes: during the drafting of the constitutional

treaty, for instance, a group of members of the European convention chose to present themselves as "friends of the Community Method".

Since the Maastricht Treaty, that model has come under increasing pressure. Its legitimacy has been the subject of heated discussion, in academic circles as well as in the populace, for instance on the occasion of the referenda organised on the draft constitution establishing the European Constitution. Governments have appeared increasingly reluctant to delegate powers to the European level. The Commission itself has attempted to explore new approaches to policy-making, which were later summarised in its 2001 White Paper on European Governance (Commission, 2001). Countless works, often in the framework of EU-funded research projects, have been devoted to "New Modes of Governance".[i] More or less implicitly, these works often regard the Community Method as "an idea whose time has passed", to use the words of former British Prime Minister John Major, echoed by many British think-tanks in the years that followed (see e.g. Leonard, 1999), or even as an instrument of "integration by stealth", in those of Giandomenico Majone (Majone, 2004).

This notwithstanding, our understanding of that model remains at best fragmentary. The formal rules are known, but their actual impact is not. How effective is the Commission as an agenda-setter? What is the actual impact of qualified majority voting? Are the Commission's surveillance power and the Court's adjudication role sufficient to ensure a correct implementation of EU law? There is no shortage of interesting hypotheses in relation to the overall efficiency of the Community Method, but empirical research is still scarce. The purpose of this chapter is to review recent evidence on the operation of European institutions, and to suggest that despite repeated allegations that the Community Method had had its day, and that new ways to conduct European policies are to be found, the effectiveness of the EU system may actually be greater than is often thought. The chapter is structured in the following manner. Part I starts by sketching out the basic elements of the

Community Method. Part II reviews briefly the elements that have prompted many observers to diagnose a crisis of the Community model. Part III discusses the trends that emerge from an analysis of EU policy-making, and purports to show that despite fears to the contrary, the EU machinery seems to have adjusted rather smoothly to the pressures caused by the 2004 enlargement. In a similar fashion, we will see the Commission can at times make us of new modes of governance to enhance its own influence. This will lead me to question the relevance of the standard opposition between old and new modes of governance in EU policies.

Understanding the model

Since those distant days that saw the launching of the European Coal and Steel Community, European integration has had its own particular *modus operandi*, the "Community Method". In spite of fifty years of debate on how to construct Europe, so great is its originality that it is still much misunderstood, even by its most zealous supporters – including those within the European Commission.

The role of supranational actors

The Schuman declaration of 9 May 1950 sets out certain essential features of the Community Method; others have emerged out of the daily interactions among the main players in European construction. The Commission described it in the following manner in its White Paper on European Governance presented in July 2001:

> "The Community Method guarantees both the diversity and effectiveness of the Union. It ensures the fair treatment of all Member States from the largest to the smallest. It provides a means to arbitrate between different interests by passing them through two successive

> filters: the general interest at the level of the Commission, and democratic representation, European and national, at the level of the Council and European Parliament, together the Union's legislature.
>
> – The European Commission alone makes legislative and policy proposals. Its independence strengthens its ability to execute policy, act as the guardian of the Treaty and represent the Community in international negotiations.
>
> – Legislative and budgetary acts are adopted by the Council of Ministers (representing Member States) and the European Parliament (representing citizens). The use of qualified majority voting in the Council is an essential element in ensuring the effectiveness of this method. Execution of policy is entrusted to the Commission and national authorities.
>
> – The European Court of Justice guarantees respect for the rule of law" (Commission 2001, pp. 9-10).

This definition rightly emphasizes the essential role played by the two "supranational" institutions, the European Commission and the Court of Justice. There is nothing surprising about the fact that they are non-elected bodies if we bear in mind that they were created by the member states to regulate relations between the states: at the time the problem of the EU's democratic legitimacy was not the burning issue it is today. Quite rightly, the Commission stresses that the Community Method is also based on the possibility, for the Council, of taking majority decisions. This detail is important, as it highlights an essential feature of the political system created by the European treaties, namely the fact that the states – and more precisely their governments – hold a central place in the system, which sets the European Union apart from a federal model, for example, where the links between the constituent parts and the central power are more tenuous.

Taken as a whole, the elements listed above also emphasise the original nature of European construction compared to more traditional forms of international cooperation. The difference lies not so much in the scope of the competences transferred to the European institutions – the Council of Europe also has very wide-ranging powers – as in the way they are exercised. Not only does the European Commission play a central role in drawing up Community policies, it is also extremely rare to find a combination of majority voting and binding decisions in an international body. When a binding decision has to be adopted, unanimity, or at least consensus, is required in most international structures. The United Nations General Assembly votes, of course, but on resolutions, texts "of a political nature", a nice euphemism that boils down to saying that states are not bound to apply them. Conversely, accepting the possibility of being bound to execute decisions one is opposed to, as the member states did when they joined the European Union, amounts to nothing more or less than a transfer of sovereignty, be it partial or temporary.

In the institutional system established by the Treaty of Rome, the Commission's role is of an altogether different nature to that traditionally played by the secretariat of international organisations. It is a source of impetus that, through its proposals, must lead the other institutions to achieve the objectives defined in the treaties. To do this, it has considerable tools at its disposal. For a start, it has an almost complete monopoly on legislative initiative, since most of the decisions taken in this area require a proposal from the Commission that it can then amend throughout the legislative procedure. Unlike what happens in most national democracies, the European Parliament and the Council of Ministers, where representatives of the member states sit, cannot, in principle, take any initiative at this level. If they feel that a European law is necessary, they must ask the Commission to put forward a proposal in due form. Moreover, these proposals may only be amended with the unanimous agreement of the member states, which gives the Commission

an instrument to encourage the formation of a majority within the Council or Parliament by amending its proposals. In short, the Commission is, *de facto* if not *de jure*, the third branch of European legislative power, alongside the Parliament and the Council. Finally, as guardian of the Treaties, it must ensure that the member states comply with their obligations. It has quasi-judicial powers in matters of competition policy and acts as prosecutor in the cases it chooses to bring before the Court of Justice.

Whose interests does the Community Method serve?

The "supranational" power thus created is in fact often perceived as being quite different to the more familiar structure of a federal state or confederation.[ii] Why did the member states of the European Union chose to confer powers of an unprecedented scope, both on a national and an international level, on a non-elected body? The question is all the more pertinent as the powers in question are not simply the result of a bold interpretation of the treaties: most of them are expressly provided for in the documents signed by the European foreign ministers.

Contrary to what might be thought, this decision was not necessarily the fruit of ideological commitment. Certainly, the Schuman declaration clearly describes the creation of the ECSC as "the first step in the Federation of Europe", but the signatories were far from being won over to the federalist cause (Milward, 1992). Even from the perspective of governments jealously guarding their prerogatives, the Community Method presented many advantages (Moravcsik, 1998, pp. 67-77).

The Treaty of Rome can indeed be described as an imperfect contract, as it only defines in general terms the objectives to be reached and the institutions and procedures put in place to achieve them. Having in an institution such as the European Commission experts who are in charge of monitoring technical and legal developments on a daily basis can facilitate

decision-making in technically complex areas. Moreover, being a neutral body, it is easier for the Commission to find a synthesis between the different national and sectoral interests concerned, which is likely to facilitate a compromise. Last but not least, this centralisation ensured that the legislative programme of the Community was not simply dictated by the power relations between the member states or by electoral contingencies. This point was the subject of bitter debate at the Val Duchesse talks, when the Treaty of Rome was drawn up (Küsters, 1990). Fearing that they might systematically be put in a minority by the weight of the "big countries" in the Council, the less populated countries insisted that all legislative procedure should start with a proposal from the Commission. The fact that unanimity was required to make any amendment to its proposals also prevented the majority from putting their particular interests above those of the minority. Thus, this obligatory passage through the Commission was the key that made the use of majority voting possible.

As for implementing Community decisions, entrusting the task of supervision to an institution whose plurinational nature protects it from direct political pressures helped establish the system's credibility, making it more likely that each state would comply with jointly-taken decisions (Majone, 1996, pp. 70-71). Competition policy is a case in point. Contrary to the rule applied to other European policies, which are implemented by national bodies, it was in fact the Commission that was entrusted with applying the general principles defined by the Treaty of Rome in matters of competition. This choice is easily explained: not only would the alternative (leaving it to the member states to implement EU competition policies) have threatened the equality of conditions of competition within the Community – each state interpreting the rules according to their own practices – it would above all have been less credible, given the tradition of economic interventionism of some governments and the complete lack of competition rules in some countries.

This lack of credibility would have been bound to create an atmosphere of mutual distrust. Why should the *Bundeskartellamt* (the German anti-trust authority) be overzealous in applying European regulations and penalise German firms, if the same regulations were applied more loosely in other countries? In other words, in an international system where there is a lack of mutual trust between the member states, centralising supervision has the advantage of making the commitments undertaken at the Community level more credible, thereby facilitating the development of a logic of cooperation between the member states.

The use of voting, another form of relinquishing sovereignty, stems from considerations of a different order. In a system where the treaties often only define the objectives to be reached in general terms, the institutions are called upon to make a large number of common decisions. In this context, unanimity is penalising, as each participant has a right of veto. Majority decision, on the other hand, facilitates decision-making… even when nobody votes! Studies of the decision-making process show that actual votes only represent 20 per cent of the decisions for which a vote would have been allowed by the treaty (Hayes-Renshaw and Wallace, 1997, pp. 48-58; Dehousse, Deloche-Gaudez and Duhamel, 2006). Yet, the mere possibility of majority decision-making encourages the different protagonists to look for a compromise. Of course, this decision-making efficiency comes at a price, as there is a possibility that a government may be put into a minority by its peers. But as long as no one is in the minority too often, the advantages gained from decisions taken in other areas make this a small price to pay. Besides, a certain number of guarantees have been put in place to win over the most wary states. Even today, unanimity is still required in sensitive areas: to wit, the famous "red lines" laid down by the British government in recent intergovernmental conferences and in the Convention to ensure that Britain would not be forced to accept what it might consider to be unacceptable choices in tax or social policy.

What can we learn from this rapid overview of the so-called Community Method? Two elements that give the lie to some commonly held perceptions. First, the method in question must not be seen as the product of a hidden commitment to federalism: it owes a great deal to the utilitarian calculations of governments that are aware that, in the context of interdependence in which they operate, it is necessary for them to define rules that will allow them to take a large number of collective decisions, at the same time as reducing the risk of free riding. Secondly, it is not only the small states that need the Community Method. It owes its existence above all to a basic fact of international relations: states – big and small – neither have an innate trust in their partners, nor a spontaneous tendency to cooperate; it is often only when necessity dictates that they choose the path of cooperation– hence the need for institutions that can facilitate a convergence of views and ensure that common decisions are correctly applied. This was nicely captured by former Commissioner Pascal Lamy (Lamy, 2002), who described the Commission as a "distrust reduction mechanism".

At the same time, for this to be possible, the Commission must be organised appropriately so as to guarantee its independence. This is why member countries' executives have insist on retaining a role in the appointment of commissioners, despite the growing grip of the European Parliament on that procedure (Hix and Lord, 1996). Similarly, the rule of collegiality – according to which all decisions are in principle taken by or in the name of the college rather than by individual commissioners – is meant to ensure an *esprit de corps* among Commission members. At the very least, it makes 'capture' of the Commission more difficult, since a substantial share of the time of commissioners' collaborators is spent following dossiers handled by other members of the Commission (Joana and Smith, 2002).

These well-known structural elements are recalled here as they are essential to understanding the dynamics of European integration. Relationships between the EU institutions are in fact often analysed from the

angle of a tension between institutions that embody two distinct types of interests: Community interests for the Commission and national interests for the Council, with growing rights of interference being attributed to the directly elected Parliament. But this tension can be seen in a more positive light, as the result of an attempt to devise a cooperation scheme in which interstate cooperation would develop without leading to the emergence of a strong central government or of a hegemonic regime dominated by a few countries.[iii]

The Community Method as a mode of governance

The absence of a powerful executive, able to assign clear programmatic goals to the Union and to see to it that action is undertaken to reach them, and imposing its views on other actors if needed, makes it difficult to regard the Community Method as the way a would-be 'government of Europe' would act. As has often been observed, despite EU law's claim to supremacy, the Union lacks several of the classical features of the state, such as the monopoly of coercive power, hierarchical control over lower levels and the ability to enforce its law. In contrast, several of the elements generally used to classify modes of governance may help us to make sense of its main features.

Thus, using the classification offered by Treib, Bähr and Falkner (2005), one could say that the Community Method rests on legally binding and enforceable actions, taken according to institutionalised procedures, in a system characterised by a high dispersion of authority. Beyond those basic elements, it may lead to a broader variety of outputs than is commonly acknowledged: decisions adopted according to the Community Method do not necessarily result in the adoption of rigid approaches to implementation; if directives are adopted or opt out clauses accepted, they may result in a fair degree of diversity. Similarly, may include material or procedural regulations (e.g. forcing national governments to notify measures that may hamper free

movement to the Commission or other member states before they are adopted). Moreover, even though they are formally adopted by public bodies, EU decision-making processes may (and often do) provide ample space for private interests: witness the important role attributed to social partners in social policy or to industry representatives in standardisation procedures. In other words, contrary to a widespread view,[iv] what is characteristic of the Community Method is the process whereby decisions are taken, rather than the outcomes they lead to. Though processes and outcomes may of course be related, the point needs to be made that the Community Method does not necessarily lead to a centralisation of authority in the hands of bureaucrats eager to impose an inflexible solution to any problem. Indeed, as has just been hinted at, there are many examples to the contrary.

A model in crisis?

Since the beginning of the 1990s, however, European integration seems to have entered a new phase. The environment in which European issues are tackled changed considerably and this has not been without effect on how the European political system works. Without going into detail, we will touch on a few points here that seem essential to understanding the difficulties that Europe is faced with today.

A crisis of legitimacy

The difficulties that surrounded the ratification of the Maastricht Treaty have brought to light that academic debates on the so-called "democracy deficit" of the EU found an echo in the populace. Opinion polls have unanimously confirmed the fact that the 'permissive consensus' that enabled the European venture to be launched (Haas, 1958) is now nothing but a memory. Waning support for integration dates back to the early 1990s, when public opinion

began to grow uneasy about the increased influence of Europe in a range of areas and express fears over economic recession and rising unemployment. Even if on the whole the public are still pro-Europe, they are now very wary of a political system they do not really understand and that sometimes appears to threaten their way of life. This is above all reflected in declining support for integration, documented in the European Commission's Eurobarometer polls: the level of positive opinion went down from 65 per cent in 1992 to an average of about 50 per cent in the late 1990s. This disaffection with Europe is also expressed in low turnout at the European elections. It reached an all-time low in 2004 with an EU average below 50 per cent. True, a similar decline has been recorded in domestic elections, but there is usually a 20 per cent gap between national and European elections.

A growing reluctance towards delegation of powers to the European Union

Around the same time, national governments began to show signs of growing impatience with what they saw as an unlimited increase in the powers of the EU, and therefore of the Commission. It is for this reason that recent years have seen an increasing number of counterweights to this power. The 'pillar structure' of the Maastricht treaty is undoubtedly the first expression of this new tendency. While the member states accepted the necessity of common action in areas such as foreign policy, security and justice, areas that are traditionally the preserve of the state, they refused to see the supranational institutions of the EU take a role commensurate to the one they enjoy in the first (economic) pillar: in these areas, the only forms of action envisaged fall within the more traditional intergovernmental framework, the leadership being in principle exercised by the European Council.

Typically, when the need for more steady steering was felt, it was met by setting up *ad hoc* structures. When European foreign policy was seen to be suffering from a severe lack of analytical and planning structures capable of inspiring a common vision of international issues, defining potential joint action and piloting its implementation, it was decided to set up a special policy unit placed under the authority of an autonomous individual, the High Representative for the Common Foreign and Security Policy (CFSP), whose powers were limited. A similar scenario has unfolded in matters of economic policy. Once again, the compromises of Maastricht proved unstable. To avoid any threat to the independence of the European Central Bank, merely an informal discussion forum (the 'Eurogroup') was set up for the finance ministers of the countries participating in the single currency, later strengthened by the creation of a more stable presidency. Once again, there was a clear desire to define a viable intergovernmental alternative to the transfer of powers to the Commission, characteristic of the Community Method.

The same phenomenon can be observed at the level of policy instruments. The wave of harmonisation that marked the completion of the internal market has been succeeded by a new phase characterised by working methods that impose fewer constraints on national administrations: benchmarking, peer review and mutual monitoring. This approach, first adopted for monetary union, was applied afterwards to employment policy in what became known as the European Employment Strategy, defined at the Luxembourg 'Jobs Summit' of 1997. Three years later, a similar approach was sketched out for all the structural reforms destined to improve economic competitiveness and modernise welfare systems. The ambitions of the 'Lisbon Strategy' were broad -- to make Europe "the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion" – but any transfer of additional powers to the European level was deliberately avoided.

The 'open method of coordination' defined on that occasion consists above all in establishing procedural routines – the definition of guidelines and indicators, periodic monitoring of national policies, exchange of best practices – intended to promote mutual emulation and learning. Mutual emulation rather than Community control mechanisms is the key to success under this new strategy. The Commission is relegated to a secondary role and the heads of state and government assume an overall role of guidance and control (Rodriguez, 2002; De la Porte and Pochet, 2002; Dehousse, 2004). This approach epitomises the new modes of governance at the EU level, which make extensive use of networks of various types and profess greater openness to civil society in public policy-making (Kohler-Koch and Rittberger, 2006; Hix, 1998).

Taken together, these moves reflect a desire to break with the broad delegation of powers that is distinctive of the Community Method. [v] The Commission, which for many symbolises the evils of the classical approach, has rapidly perceived that the wind has been changing. Already under the presidency of Jacques Delors, the Forward Studies Unit launched a research programme on "governance", and shortly after his arrival in Brussels, Romano made of the reform of European governance one of its main strategic priorities. The final product of this initiative, the Commission White Paper of July 2001, was however to show the institution's basic ambiguity in relation to this issue, since it championed the use of new instruments, while at the same time strenuously defending the Community Method (Commission, 2001; Georgakakis, de Lasalle, 2007).

The Rise of the European Parliament

Over the last two decades, a strong dose of parliamentarianism has been injected at the European level. At each Treaty reform, the European Parliament's financial, legislative and supervisory powers have been

strengthened. As a result, the Parliament has evolved from being a consultative assembly to a co-legislator in a growing number of areas. Equally importantly, it has also acquired considerable influence in the appointment of the Commission. Although this 'vote of approval' concerns the college as a whole and not any individual Commissioner in particular, the Parliament has succeeded in influencing the distribution of portfolios within the Commission and even its composition. The difficulties surrounding the nomination of the Barroso Commission in October 2004 marked an important stage in this development: for the first time, the Parliament managed to oust two of the governments' nominees.

The European Parliament's rise in power has been achieved largely to the detriment of the Commission. A weakened Commission has been forced to accept a number of new demands in the exercise of its duties: when Romano Prodi took up office he had to pledge to take "utmost account" of the desires and wishes of the Parliament in matters of political initiative. The assembly occasionally succumbs to the temptations of micro-management – when it supported individual sanctions against certain European officials after the mad cow crisis, for example. For now, though, these are but occasional demonstrations of the European Parliament's growing authority. For there to be a lasting shift in the centre of political gravity in the European Union, a stable and coherent majority would be needed within Parliament and this does not seem to be the case yet, despite the apparent growth of party discipline in EP votes (Hix, Noury and Roland, 2005). Today, Europe is in a halfway house, with the Commission weaker than ever before and a real parliamentary system still not a reality.

The challenge of numbers

Finally, the enlargement was seen largely as a major source of stress for the EU institutions. Going from 15 to 27 members, with the possibility of further

enlargement before long, can only make an already complex institutional system even more unwieldy – and also less transparent. What is more, the fine balance struck between the large and small states during the 1950s appeared under threat, as all the new members, with the notable exception of Poland, fell into the category of 'medium' or 'small' countries. This led to protracted discussions concerning both voting in the Council and the structure of the Commission (Magnette and Nicolaidis, 2004).These questions have been at the heart of the debates exercising Europe over the last ten years. In Amsterdam and later in Nice, government representatives struggled to find answers to these different problems, without much success, as they later came to admit. The failure of the draft constitutional treaty left the Union to cope with the arrangements introduced by the Nice Treaty, which were widely regarded as insufficient to enable the Union to face up the challenge of numbers (Tsebelis, 2005). Hence the worries of the declared supporters of the "Community Method".

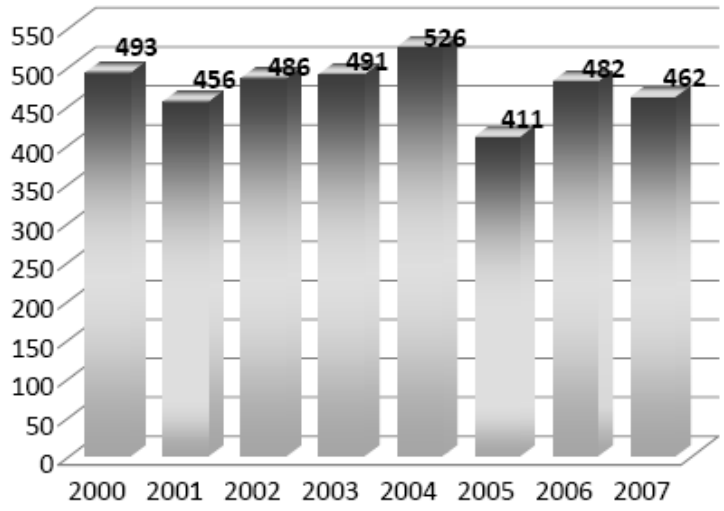
Reviewing the evidence

Despite its announced demise, many elements suggest that the Community Method has been more resilient than expected. First of all, the volume of "hard law" produced by the European institutions is anything but declining.[vi] As shown in Graph 1, the volume of Commission proposals has remained fairly stable after the last enlargement, despite a temporary drop in 2005.

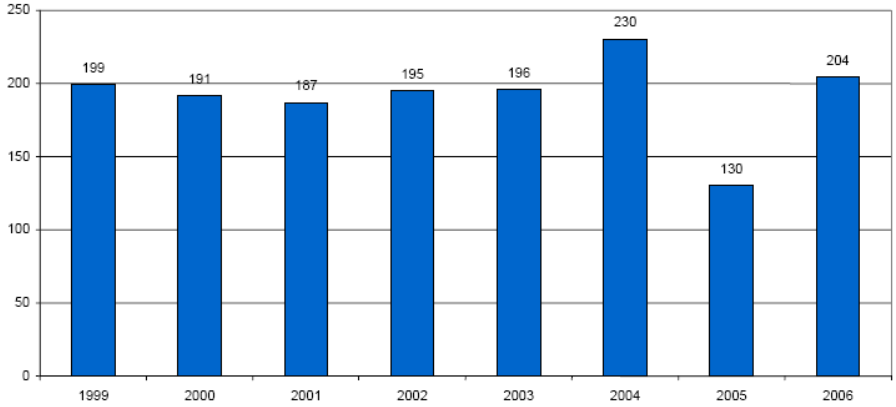
A similar curve exists in relation to legislative production. Year after year, the Union adopts about 200 legislative texts (Graph 2). True, there was a sharp decline in 2005, but it appears to be a by-product of an acceleration registered the previous year, with a peak of 230 texts, nearly two-thirds of which were adopted in the four months that immediately preceded the arrival of the new members. Obviously, the fear of paralysis generated by the enlargement played a major role in that acceleration. But interestingly, after

the 2005 decline, legislative output has returned to pre-enlargement levels, which suggests that the EU machinery has reacted better than many observers anticipated. Even more surprising, decisions are taken more rapidly (Dehousse, Deloche-Gaudez and Duhamel, 2006, chapter 1). Interestingly, the stability of legislative output is also quite remarkable in the social policy sector, which was the theatre of many attempts to introduce "new modes of governance" (Pochet, 2007).

Graph 1: Number of Commission Proposals



Graph 2: Number of Legislative Acts (1999-2006)

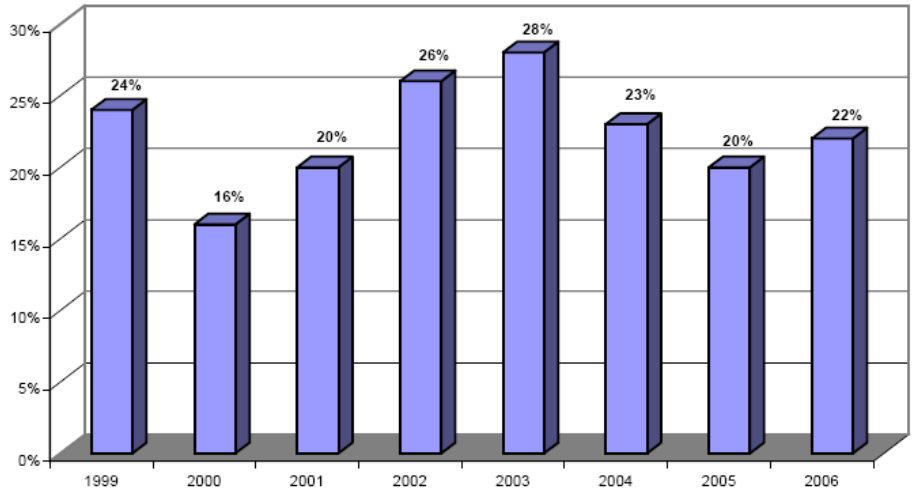


Sources: Council General Secretariat for years 1999-2002 & Observatory of the European Institutions for years 2003-2006

The same thing could be said about another major source of hard law, namely the European Courts (European Court of Justice and Court of First Instance), whose number of rulings has been climbing, which is hardly a surprise since an increased number of member countries could be expected to lead mechanically to an increase in litigation. Needless to say, those figures say nothing of the normative quality of EU law or of its content (pro-integration or not). But clearly, the enlargement has not had the announced crippling effect on the Community law-making system.

Secondly, the frequency of the resort to voting has remained stable. After a peak observed in 2002 and 2003, the ratio between the number of votes registered and the number of legislative acts taken on the legal basis of QMV has attained 22 per cent in 2006 - a figure that is in the average of figures recorded from 1999 to 2006[vii] (Graph 3).

Graph 3: Number of Public Votes in % of Definite Legislative Acts adopted under Qualified Majority Voting 1999-2006



Sources : Hayes-Renshaw, Van Aken, Wallace (2006) for 1999-2001 / OIE data for 2002-2006

Interestingly, the time period before voting tends to shorten. Prior to enlargement, it took on average almost 475 days after an act was transmitted

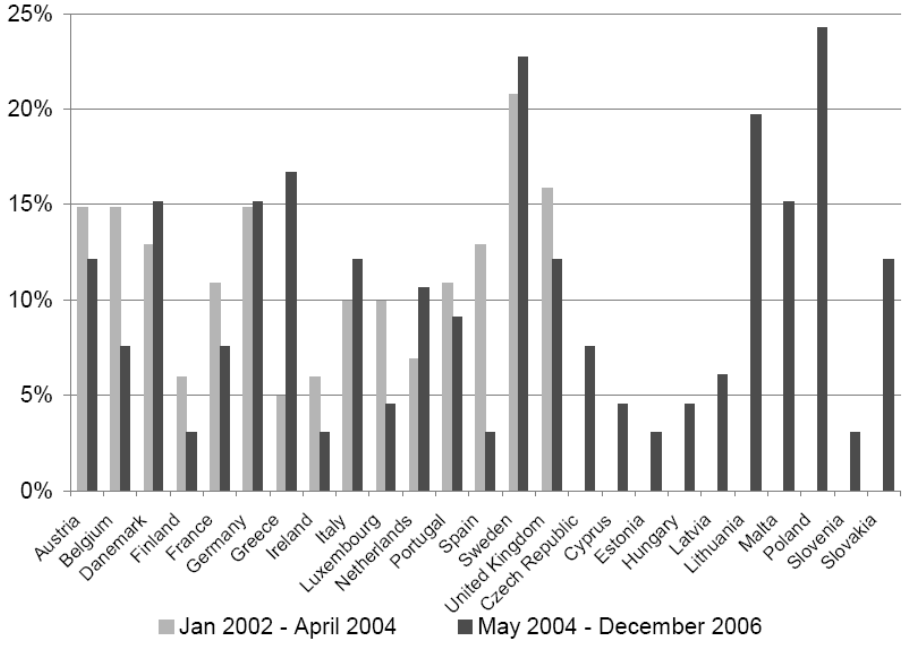
to the Council for the ministers to decide that a vote was to be taken. This time period has now declined to around 450 days, which might contribute to explaining the acceleration in legislative procedures. Of course, the relatively limited number of votes that took place during this period imposes a great caution in the interpretation of this data. Nevertheless, it appears that contrary to many pre-2004 forecasts, the enlarged Council is not less willing to vote than its predecessors.

Thirdly, the frequency with which states voice their opposition to a Commission proposal does not appear to have changed significantly. To evaluate this, we incorporated all negative votes and abstentions for each member state - since both of these tools can be used to manifest, in varying degrees, their dissent – and compared them to the number of acts having given rise to public votes.[viii] Between January 2002 and April 2004, the two states most prone to vote against a proposal or to abstain, Sweden and the United Kingdom, were placed in a minority respectively 21 and 16 times out of 101 publicised votes, which represents an 'opposition rate' of respectively 21 per cent and 16 per cent (Graph 4).

After the 2004 enlargement, the number of states whose opposition rate exceeded 15 per cent increased from two to four and the value of these highest opposition rates increased as well. Sweden's 'opposition rate' reached 23 per cent and that of Poland 24 per cent. We should not, however, pay too much importance to the individual situation of any country in particular, since the opposition to 'packages' of decisions (as occurred in the domain of fisheries in December 2002 or in the domain of research and development in December 2006) can inflate their opposition rate. What appears more significant is that the average 'opposition rate' has declined from 11 to 10 per cent, which suggests that decision-making has retained a consensual character. Another element worthy of some notice is that even though much was made of a purported cleavage between 'large' and 'small' states during the preparation of the draft constitutional treaty, such a cleavage is not found on

the level of votes cast in the Council. After enlargement, the five states with the highest opposition rates are, in decreasing order: Poland, Sweden, Lithuania, Greece, Germany, Denmark and Malta. The data does not reveal any form of stable coalition. It may be thought that this helps facilitate the acceptance of the vote: a state systematically placed in a minority would have difficulty tolerating its situation.

Graph 4: 'Opposition Rate' of each Member State

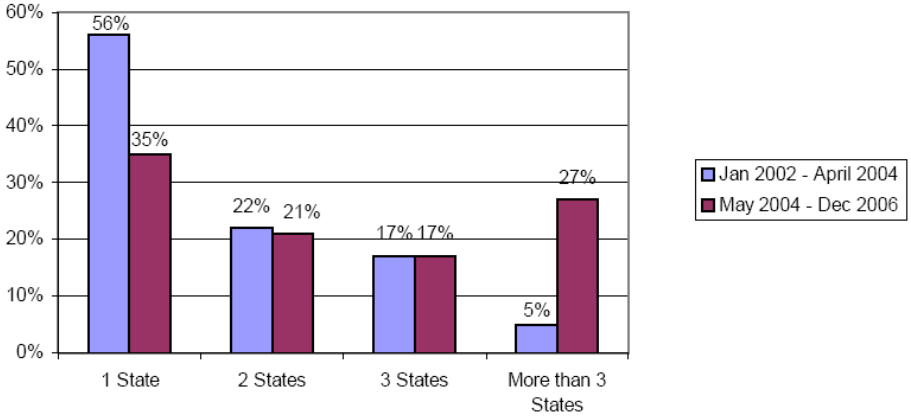


Source: OIE Data

In this respect, it is interesting to note that, since enlargement, the size of the minorities has been increasing. One of the permanent features in the period between 1998-2004 was that around half of all votes involved only one state (Hayes-Renshaw, Van Aken and Wallace, 2006, pp. 161 and 169). Thus the vote, far from being an instrument of the 'government' of the Union, serves first and foremost as a means of unblocking a situation where a unanimous accord is declared impossible. This explains why Germany and

Denmark have rather high rates of opposition: the former can indicate to the Lander and the latter to its national parliament that they were not able to oppose EU decisions despite the commitments made to their legislative bodies. At this level, enlargement seems to have induced a significant change. After May 2004, the number of one-state minorities fell to 35 per cent, while the percentage of minorities that group more than three member states increased to more than 25 per cent (Graph 5). This seems largely due to the behaviour of new member States, who appear less inclined to oppose Commission proposals if they are isolated (Dehousse and Deloche-Gaudez, 2008).

Graph 5: Coalitions of States opposed to the Adoption of Legislative Acts in the Council



Source: OIE Data

Still, this remains very far away from a clear majoritarian pattern: even decisions taken by a vote are best described as consensual, given both the high majority threshold established by the Treaty (over 70 per cent) and the reluctance to outvote a large number of countries. Be that as it may, the quantitative evidence available clearly suggests that enlargement has not led to a major disruption of the system, at least as regards decision-making.

Conclusion

Four decades ago, in a much-remarked article, Stanley Hoffman (1966) argued that despite functionalist expectations to the contrary, the states were not withering away, and that they should be expected to retain a major role in European affairs. Much the same thing could be said today about the "Community Method". Fifty years after the Treaty of Rome, which gave it a new shape after the *debacle* of the European Defense Community, it clearly plays a central role in contemporary EU policy-making, notwithstanding repeated declarations about its alleged obsolescence made by political leaders and students of European integration.

This article has displayed several indicators of its vitality. It has shown an amazing ability to evolve in reaction to new challenges. The main institutional innovation of the past two decades, the emergence of the European Parliament, has been absorbed without major shock, and the same can be said, so far at least, for a spectacular enlargement process. Year after year, the volume of EU legislation remains remarkably stable. Whatever one may think of its political orientations, the European Commission does not sit idle and produces a steady volume of proposals. Although the number of member countries has more than doubled in twenty years, the Council does not seem to face greater difficulties in making decisions. At all these levels, the latest enlargements do not appear to be the major source of difficulties that had been expected. And the very fact that rulings of the Court of Justice can be controversial – as was the case with the *Laval* and V*iking* cases, dealing with the rights of workers to collective action and the competition between national systems of social protection – can be seen as indicative that the Court has remained a central actor in EU policy-making – too strong an actor, some would argue.

True, the post-1992 period has seen many innovations and a clear will to experiment with new modes of governance. But the opposition between

old and new governance should not be over-emphasised. First, several hallmarks of the new instruments – flexibility, decentralisation, deliberative policy-making etc. – already featured prominently in some EU policies well before the current governance literature started to blossom (Ehlermann, 1983-84; Sabel and Zeitlin, 2008). Secondly, new modes of governance, such as dialogue with civil society, can also be used by EU institutions to enhance their influence (Cram, 2007). It has also been shown that the modes of action, and even at times the structure, of the actors to which the new governance literature has directed our attention, such as non-governmental organisations, were often influenced by EU policies (Sanchez-Salgado, 2007). Much of the ambiguity of the current situation stems from the fact that the turn to governance has been developed largely to enable the EU to step into policy areas in which, for a variety of reasons, the delegation of powers to supranational actors was deemed unacceptable – the best example being, of course, the famous open method of cooperation, the aim of which was clearly to Europeanise one of the strongholds of modern states, i.e. their welfare systems.

Rather than viewing the relationship between old and new governance as a tug of war in which one will clearly be called upon to prevail over the other one day, one should think of them as distinct, though not clearly antagonist, approaches to policy-making at the European level. For the EU, like most systems of contemporary governance, "normally functions through a mix of co-existing, partly inconsistent organisational and normative principles, patterns of participation, behavioral logics, standard operating procedures and legitimate resources" (Olsen,2008, p. 7).

Thus, whatever the aims of its promoters, it makes little sense to argue that "new" governance will necessarily lead to the demise of the Community Method. As a recent strand of critical literature has observed, the effectiveness and long-term viability of many new instruments remain to be demonstrated (Idema and Kelemen, 2006). On the basis of the evidence reviewed in this

chapter, the importance of the Community Method does not appear to be in decline. Furthermore, the Lisbon Treaty contains elements that should in all likelihood improve its scope, such as an extension of qualified majority voting and the shift of a substantial part of security and justice matters to the first pillar. More fundamentally, EU governance is too complex to be captured by simple dichotomies, such as the opposition between old and new modes. Rather than thinking in terms of alternatives, we should try to analyse how different modes of governance are combined, and how the mix changes over time (Olsen, 2008, pp. 6 and 11).

In that respect, the quantitative evidence discussed here mostly relates to the decision-making process, which leaves open the possibility that the structural challenges discussed above impinge upon the substance of the decisions taken. Indeed, there are reports that the deals struck in Brussels allow greater flexibility (in the form of opt-outs, for instance) than in the past or that they result in incoherent compromises (Haegeman and De Clerck-Sachse, 2007). More research is therefore needed to be able to say if the balance of power has been altered and if power has moved away from the centre. Recent studies have also shown that EU control mechanisms were far from sufficient to guarantee a faithful implementation of joint decisions (Falkner et al., 2005). Moreover, arguing that the Community Method does retain a central role in today's EU does not necessarily entail that this model is intrinsically stable. As we saw above, it has generated a fair amount of , and remains challenged in various circles. Some of its success stories, such as its adaptation to the rise of the European Parliament, may even bring new problems. Thus, for instance, the fact that about two-thirds of the legislative texts adopted by the Council and the Parliament in co-decision are adopted in the first reading may be seen in two ways. On the one hand, it shows that institutions have been able to find ways to cooperate smoothly with one another; on the other, given the part played in this process by informal dialogues bringing together a handful of people on each side (Shackleton,

2000), it could as well be argued that this trend contributes to strengthening the elitist bias of European policy-making. If the pressure in favour of democratisation remains, as is likely, the Community Model will be called upon to evolve further.

Notes

[i] See the literature review in Kohler-Koch and Rittberger (2006); Bähr, Falkner, Treib (2005) and Olsen (2008).

[ii] As early as 1953, Robert Schuman wrote that "the supranational is positioned at an equal distance between, on the one hand, international individualism, that considers national sovereignty untouchable and only accepts contractual, occasional and revocable obligations as limitations of sovereignty; and on the other hand, the federalism of states that submit to a super state endowed with its own territorial sovereignty. The supranational institution, such as our Community, [...] does not have the characteristics of a state; but it holds and exercises some sovereign powers." (Schuman, 1953, p. 7. Author's translation)

[iii] This Madisonian view finds an echo in the works of Giandomenico Majone (Majone, 2007).

[iv] See in particular the forceful critique of Giandomenico Majone, 2005.

[v] Helen Wallace speaks of 'intensive transgovernmentalism' (Wallace and Wallace, 2000, pp. 3-37). See also Majone, 2005, pp. 51-63.

[vi] The data discussed in this section is taken from a large-scale empirical project conducted at Sciences Po in Paris, the Observatory of the European Institutions.

[vii] According to Hayes-Renshaw, Van Aken and Wallace (2006), the average figure is 20 per cent over the period 1999-2004. In our data, the average figure is 24 per cent over the period 2002-2006.

[viii] We do not take account of legislative acts adopted under the rule of unanimity which gave rise to abstentions.

References

Cram L. (2007), "In the Shadow of Hierarchy : The Commission and the Community Method", paper presented at the CONNEX workshop on "The Community Method: How much do we know about it", Paris, 29 November 2007

Dehousse R. (ed.) (2003), *L'Europe sans Bruxelles? Une analyse de la méthode ouverte de coordination*, Paris: L'Harmattan

Dehousse R., Deloche-Gaudez F., Duhamel O. (2006), *Elargissement. Comment l'Europe s'adapte*, Paris : Presses de Sciences Po

Dehousse R., Deloche-Gaudez F. (2008), « Voting in the Council of Ministers : The Impact of Enlargement », in Ott A., Vos E. (eds), *50 Years of European Integration: Foundations and* perspectives, Asser Publishing, forthcoming

De la Porte C., Pochet P. (eds) (2002), *A New Approach to Building Social Europe: The Open Method of Coordination*, Brussels: European Interuniversity Press/Peter Lang

Ehlermann, Claus-Dieter (1983-84), "How flexible is Community Law? An Unusual Approach to the Concept of 'Two Speeds', *Michigan Law Review,* vol. 82, pp. 1274-93

European Commission (2001), *European Governance. A White Paper*, COM Doc, 428, 25 July

Falkner G., Treib O., Hartlapp M., Leiber S. (2005), *Complying with Europe. EU Harmonsisation and Soft Law in the Member States*, Cambridge: Cambridge University Press

Georgakakis D., de Lassalle M. (eds) (2007), *La « nouvelle gouvernance européenne ». Genèse et usages d'un livre blanc*, Strasbourg: Presses universitaires de Strasbourg

Haas E. (1958), *The Uniting of Europe*, Stanford, Stanford University Press

Hagemann S., De Clerck-Sachsse J. (2007), "Decision-making in the Enlarged Council of Ministers: Evaluating the Facts", *CEPS Policy Brief*, n° 119, January

Hayes-Renshaw F., Wallace H. (1997), *The Council of Ministers*, Basingstoke: Macmillan

Hayes-Renshaw F., Van Aken W., Wallace H. (2006), "When and Why the EU Council of Ministers Votes Explicitly", *Journal of Common Market Studies*, vol. 44 (1), March, pp. 161-194

Hix S. (1998), « The Study of the European Union : The "New Governance" Agenda and its Rival", *Journal of European Public Policy,* 5(1), pp. 38-65

Hix S., Noury A., Roland G. (2005), Power to the Parties: Cohesion and Competition in the European parliament 1979-2001, *British Journal of Political Science,* 35(2), pp. 209-34

Hix S., Lord C. (1996): "The Making of a President: The EP and the Confirmation of Jacques Santer as President of the Commission", *Government and Opposition*, 31(1), pp. 62-76

Hoffman , S. (1966), "Obstinate or Obsolete? The fate of the nation state and the case of Western Europe", *Daedalus, Proceedings of the American Academny of Arts and Science*, 95(3), pp. 862-915

Idema T., Kelemen D. R. (2006), "new Modes of Governance, the Open Method of Co-ordination and other fashionable red herring", *Perspectives on European Politics and Society*, vol. 7, n°1, pp. 108-123

Joana J., Smith A. (2002), *Les commissaries européens : technocrates, diplomates ou politiques ?*, Paris : Presses de Sciences-Po

Kohler-Koch B., Rittberger B. (2006), Review Article: The "Governance Turn" in EU Studies, *Journal of Common Market Studies*, 44, issue 1, pp. 27-49

Kusters H-J. (1990), *Les Fondements de la Communauté économique européenne* [The Foundations of the European Economic Community], Brussels: Labor, Luxembourg: EUROP

Lamy P., (2002), "*L'Europe de demain*", speech at the inauguration of the new academic year at the ULB (Free University of Brussels), Brussels, 14 October

Leonard M. (1999), *Networking Europe*, London: Foreign Policy Centre

Magnette P., Nicolaïdis K. (2004), "Coping with the Lilliput Syndrom. Large vs. Small member States in the European Convention", *Politique Européenne*, n°13, pp. 69-92

Majone G. (1996), *Regulating Europe*, London: Routledge

Majone G. (2005), *Dilemmas of European Integration. The Ambiguities and Pitfalls of Integration by Stealth*, Oxford: Oxford University Press

Majone G. (2007), "Federation, Confederation, and Mixed government: A EU-US Comparison", in Menon A., Schain M.A., *Comparative Federalism: The European Union and the United States in Comparative Perspective*, Oxford: Oxford University Press, pp. 121-46

Milward A. (1992), *The European Rescue of the Nation-State*, London: Routledge

Moravcsik A. (1998), *The Choice for Europe. Social Purpose and State Power from Messina to Maastricht*, Ithaca: Cornell University Press

Olsen J.P. (2008), EU Governance: Where do We Go from Here?, in Kohler-Koch B., Larat F. (eds.), *European Multi-level Governance: Contrasting Images in National Research*, Cheltenham: Edward Elgar Publishing

Pochet P. (2007), "Social Europe : Still binding regulations ?", paper presented at the CONNEX workshop on "The Community Method: How much do we know about it", Paris, 29 November 2007

Rodriguez M.J. (ed.) (2002), *The New Knowledge Economy in Europe: A Strategy for International Competitiveness and Social Cohesion*, Cheltenham: Edward Elgar

Sabel C., Zeitlin J. (2008), "Learning from Difference: The New Architecture of Experimentalist Governance in the European Union", in the *European Law Journal*, vol. 14, n°3

Sanchez-Salgado R. (2007), *Comment l'Europe construit la société civile*, Paris : Dalloz

Schuman R. (1953), Preface, in Reuter P. *La Communauté européenne du charbon et de l'acier*, Librairie générale de droit et de jurisprudence

Shackleton M. (2000), « The Politics of Codecision", *Journal of Common Market Studies*, vol. 38, June, pp. 325-342

Treib O., Bähr B., Falkner G. (2005), Modes of Governance: A Note Towards Conceptual Clarification. *European Governance Papers (EUROGOV)* No. N-05-02. http://www.connex-network.org/eurogov/pdf/egp-newgov-N-05-02.pdf

Tsebelis G. (2005), "The European Convention and the Rome and Brussels IGCs: A Veto Players Analysis", in Koenig T. and Hug S. (eds), *Preference Formation and European Constitution-building. A Comparative Study in Member States and Accession Countries*, London: ECPR/Routledge

Wallace H. and W. (eds) (2000), *Policy-Making in the European Union*, Oxford: Oxford University Press