

THE FEDERAL STRUCTURE: A CHALLENGE FOR THE EUROPEAN UNION ADMINISTRATIVE AND ORGANIZATIONAL FUTURE

A delimitation study between bureaucracy and governance

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1. INTRODUCTIVE REMARKS ON THE CONCEPT OF FEDERALISM “A L’EUROPEENNE”

Federalism fulfils two major functions:

a) A vertical separation of power by a division of responsibilities between two levels of government. The component units as well as the federation are usually geographically defined, although “societal federalism” contemplates non-territorial units as components of a federation.

b) The integration of heterogeneous societies, while preserving their cultural and/or political autonomy.

Both functions imply that the component units and the federation have autonomous decision powers which they can exercise independently from each other. Thus, sovereignty is shared or divided, rather than exclusively located at one level.

By no means do we suggest that the European Union is, or should become, a “federalised” state. Even, without the legitimate monopoly of coercive force, the European Union has acquired some fundamental federal qualities. The European Union possesses sovereignty rights in a wide variety of policy sectors reaching from exclusive jurisdiction in the area of Economic and Monetary Union to far-reaching regulatory competences in sectors such as transport, energy, environment, consumer protection, health and social security and, increasingly penetrating even the core of traditional state

responsibilities such as internal security (Schengen, Europol) and, however, to a lesser extent, foreign and security policy.

2. EUROPEAN UNION FEDERALIST TRENDS

The European Union is transforming itself into a political community within a defined territory and with its own citizens, who are granted (some) fundamental rights by the European Treaties and the jurisdiction of the European Court of Justice. The European Community was conceptualised as a primarily functionally defined organisation of economic integration without fixed territorial boundaries and no direct relationship between its institutions and the European citizens. With the Treaties adopted in Maastricht (1992) and Amsterdam (1997), however, the Single Market has been embedded in a political union with emerging external boundaries and a proper citizenship.

Not only has the European Union developed into a political community with comprehensive regulatory competences and a proper mechanism of territorially defined exclusion and inclusion (European citizenship), but also, it shares most features of what the literature defines as a *federation*. The key points that justify this European federative perspective are:

- a) The European Union is a system of governance which has at least two orders of government, each existing under its own right and exercises direct influence on the people.
- b) The European Constitutive Treaties allocate jurisdiction and resources to these two main orders of government.
- c) There are provisions for 'divided government' in areas where the jurisdiction of the European Union and the Member States overlap.
- d) EU Law enjoys supremacy over National Law.
- e) European legislation is increasingly made by majority decision obliging several times individual Member States against their will.

f) At the same time, the composition and procedures of the European institutions are based not solely on principles of majoritarian representation, but guarantee the representation of 'minority' views.

g) The European Court of Justice serves as an umpire to adjudicate conflicts between the European institutions and the Member States.

h) Finally, the European Union has a directly elected parliament (since 1979), whose the competencies are significantly increased.

The European Union failed to take into consideration two significant features of the federation. *First point:* the Member States continue to have the exclusive competence to modify the constitutive treaties of the Union. *Second point:* in the European Union (Euro zone) there is no fiscal federalism. Otherwise, however, *the European Union today looks like a federal system, it works in a similar manner to a federal system, so why not call it an emerging federation?*

If the fiscal federalism in European Union was effective and, while eleven countries out of sixteen display current account deficits, the Euro zone as a whole does not suffer from savings deficit. A debt crisis, for one of EU member states, would never have occurred, if a transfer of savings was institutionally organized. In this perspective, two conditions are necessary: *the harmonisation of the tax rates and the political declaration of equality of living standards within the EMU.*

The direct profit from this reality would be that the upward revision of the official forecast of the Greek public deficit for the end of the year 2009 (from 6 to 12.7% of GDP) never led to such a gauge of interest rates on sovereign debt of EU member states. But the condition for this potentiality would be that the European integration was achieved, because: *the European Union as a whole does not suffer from lack of savings and the external funding for the EU partners experiencing that a lack of savings is provided mostly by the other members of the Euro zone.*¹

If we accept take into consideration that the European Union has been evolving into a federal system where formal and material sovereignty is divided and shared, federalism

¹ Broyer Sylvain & Brunner Costa, *Que coûterait le fédéralisme fiscal à la zone euro ?*, Economic Research, BPCE Group, n° 38/2 .2.2010

of the distribution provides a different alternative in the organization of power vertically, between the European Union and the Member States, and horizontally, between the executive and legislative powers.

In principle, there are two federal models, which differ according to the distribution of competences between the two levels (shared versus divided) and the representation of the states at the federal level (strong versus weak). Therefore, the question raised is which model is the most realistic for a European federation. To begin with, first, given the current distribution of power, whereby the EU and the Member States *share* most of the policy competences, the German model of co-operative federalism appears to be most feasible. With the exception of monetary union, the European Union cannot legislate without the consent of the Member States, even in the area of its exclusive competences such as the foreign trade. There are hardly any areas in which the Member States completely ceded sovereignty to a European level and do not directly participate in the decision-making.

Additionally, the European Council and the Council of the European Union could easily be transformed into a *Bundesrat*-type second chamber of the European Parliament, while the Commission would become the European government (with or without a directly elected European president). One can still estimate that the members of the first parliamentary chamber should also become the members of the Member State parliaments. In conclusion, the German and European federal systems share a consensus-oriented political culture which the prevention of political stalemate to prevent political stalemate and allows the smaller members to achieve a fair chance of being heard, even if their voting power is curbed, which seems to be unavoidable given the prospect of EU enlargement.

The theory proposes two forms of federal organisation: *co-operative or intra-state federalism and inter-state federalism*.

Co-operative or intra-state federalism, of which Germany is almost a prototype, is based on a functional division of labour between the different levels of government. While the federation makes the laws, the states are responsible for implementing them. The vast majority of competences are concurrent or shared. This functional division of labour requires a strong representation of the states at the federal level, not only to grant an

efficient implementation of federal policies, but also to prevent the states from being reduced to mere administrative units. The reduced capacity for the self-determination of the states is compensated by their strong participation in federal decision-making through the second chamber of the national legislature.

Inter-state federalism to which the US most closely corresponds, emphasises, on the one hand, to the institutional autonomy of the different levels of government, and, on the other hand, aiming at a clear vertical separation of powers. Thus each level should have an autonomous sphere of responsibilities when competences are allocated according to policy sectors rather than the policy functions. For each sector, one of the two levels of government has both legislative and executive powers. Consequently, the entire machinery of government tends to be duplicated where each level should manage its own affairs autonomously.

The question raised here is which of the two models appears most appropriate for a European federation. The European proposal (presented by the German ex- Foreign Minister Joschka Fischer in the spring of 2000) initiated another debate on the future of the European Union, concerning the issues of political integration, democracy, and federalism. The strong levels of the elite support of the EU, the variable political integration and the democratic reforms, challenge some common assumptions on the matters of integration, sovereignty and democratic deficit. Moreover, evidence of an increasing “European” body of elites that support the federal-type sharing of authority, based on policy issues, come to light. Furthermore, the “core” of pro-EU states does not apply to the existent political integration and the increased EU authority. In conclusion, although the increasing decision making is supported widely at an EU level, there is also equal and related support for the making of the democratic reforms as a necessary condition for political integration.

After sixty years of Robert Schuman’s vision of a “European Federation” for the preservation of peace, a completely new era in the history of Europe was inaugurated by Fisher’s proposal tried to create a completely new era in the history of Europe. European integration was the response to the bandwagoning behaviour of the states during the two World Wars (between 1914 and 1945). The continuous struggle for power and peace and as a consequence the centuries of terrible hegemonic wars that dominated the world came to an end. After 1945, the concept of Europe as an idea had, and still has, to its core, the

rejection of the European principle of the balance of power and the rejection of the hegemonic ambitions of the individual states, that had emerged following the Peace of Westphalia (1648). This rejection took the form of a decoy of the vital interests and led to the delegation of the sovereign rights from the nation state to the supranational European institutions.

Europe and the process of European integration became probably the greatest political challenge among the people and the states involved because its success or failure, or even the stagnation of this process, would become of crucial importance to the future of the young generation.

What should be underlined here is that the European Union lacks one important feature of the German federation, which is likely to be replicable though at a European level. But the European Union lacks one important feature of the German federation, which is unlikely to be replicable at European level. German co-operative federalism corresponds to a clear political preference for equal living conditions enshrined in the German Constitution and widely shared by German society. Instead of preserving and accommodating socio-economic and cultural plurality, the post-war German federal system was supposed to provide similar living conditions for all German citizens, irrespective of the state they lived in.

Nevertheless it has yet to be decided how to preserve best a strong role for the Member States in the European federation; either by granting them a strong representation at a European level (German model), or by providing the Member States with a strong and autonomous sphere of competences (US model). While mostly leaning towards the US model, Fischer would have to opt for the German model (*i.e.*, the executives of the Member States must be represented (the *Bundesrat* model)-on the one hand, and sovereignty rights will have to be shared rather than divided, on the other) to achieve a strong representation of the Member states' interests at a European level.

A 'senate' type concept, whence the members of the second chamber of a future European parliament are drawn from the national parliaments, provides only a weak representation of territorial interests at a European level. As the US Senate provides ample evidence, the senators tend to represent functional and constituency interests rather than territorially defined concerns. It also follows that such a model has to be built on the

division of sovereignty rather than on the concept of shared sovereignty, in order to avoid a far too centralised federal state. In that case, the EU would need to dispose of legislative and executive competences, which would exercise *independently* of the Member State governments. Furthermore, independent legislative and executives responsibilities would have to be accompanied by a *minimum degree of taxation and spending autonomy* for the European government, if the European federation is not to become a mere fig-leaf, veiling a return to the Europe of the nation-states.

3. US FEDERALIST MODEL EFFECTS AND THE EUROPEAN PARTICULARITIES

About the Federal Bureaucracy: What is it and how is it organized?

A first definition reflects the fact that the government organizations, usually staffed with officials selected on the basis of experience and expertise that implement public policy, of hierarchical organization into specialized staffs, are free of political accountability. The ideal impact of this definition is that the members apply specific rules of action to each case in a rational, nondiscretionary, predictable, and impersonal way.

About the bureaucracy: What does it do?

From protecting the environment, to collecting revenue to the regulating of the economy.

In accordance with this reflection, we remark that vague lines of authority allow some areas of the bureaucracy to operate with a significant amount of autonomy.

Max Weber tried to define the growth of the Federal Bureaucracy. In 1789, there were 50 federal government employees. In 2000, this rate is 2.8 million (excluding military, subcontractors, and consultants who also work for federal government). The growth is mainly at state and local level since 1970. The Federal government began devolving powers and services to state and local government. The total federal, state, local employees are roughly 21 million people.

About the Organization of Bureaucracy and according to US experience: it tries to express a complex society that requires a variety of bureaucratic organizations.

The federal bureaucracy is a notion composed by four components of Federal Bureaucracy: **Cabinet departments, Independent executive agencies, Independent regulatory agencies and Government organizations** (e.g. *United States Postal Service, Federal Deposit Insurance Corporation/ to maintain stability and public confidence, Tennessee valley Authority/ to serve the Valley through Environment, Energy and Economic Development*)

1. **About the Cabinet Departments**, there are 15 departments which serve as the major service organizations of federal government (State, Treasury, Defense, Justice, Interior, Agriculture, Commerce, Labor, Health and Human Services, Housing and Urban Development, Transportation, Energy, Education, Veterans' Affairs, Homeland Security). The political appointments (Secretaries) at the top are directly accountable to the president.

2. The **Independent Executive Agencies** are not located within any cabinet department, but they report directly to the President. This gives it some independence from a department that may be hostile to the creation of the agency (e.g. Secretary of the Interior vs. Environmental Protection Agency; Environmental Protection Agency, Office of Homeland Security; before it was made a department last year)

3. **The Independent Regulatory Agencies** produce and implement rules and regulations in a particular sector of the economy to protect the public interest; it signifies that Congress is unable to handle complexities and technicalities which are required (in order to carry out specific laws)carrying out specific laws. Finally, are they truly independent? They suppose to work for public interest, but industries can “capture” them. (e.g. Federal Reserve Board, Equal Employment Opportunity Commission, Nuclear Regulatory Commission)

4. Government Organizations

How the Bureaucracy is staffed?

a. By Natural Aristocracy

Thomas Jefferson (third President of the United States (1801-1809), principal author of the Declaration of Independence (1776) and the most influential Founding Fathers for his

promotion of the ideals of republicanism in the United States) fired Federalist employees and placed his own men in government positions.

b. By Spoils System

Andrew Jackson, seventh President of the United States, used government positions to reward supporters. He implemented the theory of rotation in office, declaring it "a leading principle in the republican creed. He believed that rotation in office would prevent the development of a corrupt bureaucracy. To strengthen party loyalty, Jackson's supporters wanted to give the posts to party members. In practice, this meant replacing federal employees with friends or party loyalists. Bureaucracy became corrupt, bloated, and inefficient.

How the Civil Service Reform was realized?

a. **By Pendleton Act of 1883** that provided the employment on the basis of merit and open, competitive exams and created the Civil Service Commission in order to administer the personnel service.

b. **By Hatch Act of 1939** that provided that the Civil Service employees cannot take an active party in the political management of campaigns.

How the Political Control of Bureaucracy is organizing?

Who should control the bureaucracy?

Bureaucracy should be responsive to elected officials (Congress, the President)

That signifies:

- The members of the bureaucracy are not elected, and must be held accountable for their actions,
- Making them responsive to elected officials give the public a voice in bureaucratic operations.

The bureaucracy should be free from political pressures that signify that the members of the bureaucracy should be autonomous. For James Wilson, Bureaucracy is neutral and not political. Bureaucrats are experts in their specialties and must be left alone to do their job without political interference.

The Iron Triangles theory proposes the reinforcement of the policy-making relationship between the Interest Groups, the Congressional Subcommittees and the Bureaucratic

(Executive) agencies. The Policy decisions are made jointly by these three groups that feed off each other to develop and maintain long-term, regularized relationships. Within the Federal Executive, the three sides often consist of various congressional committees, which are responsible for funding government programs and operations and then providing oversight of them; the federal agencies, which are responsible for the regulation of those affected industries; and last, the industries themselves, as well as their trade associations and lobbying groups, which benefit, or seek benefit, from these operations and programs.

The US model of dual federalism, consecutively, would allow for a weaker European federation. It is grounded in a deep suspicion of a strong central state and, hence, resonates with the French and British distrust of what they perceive as an emerging European federal state and with the corresponding claims for a strict application of the principle of subsidiarity. The restriction of European jurisdiction to a clearly defined area would also leave the Member States with their autonomous taxation powers. A directly elected European president and a stronger European Parliament would significantly increase the legitimacy of the European federation. Finally, as the state's executive interests are less dominant in a European level than in the German model, a vertically integrated party system which is still missing in the EU is of (lower) lesser importance. Nonetheless, the introduction of the American model of federalism may be even more demanding than the German model.

Firstly, divided sovereignty would require that most Europeanised legislation should be dis-entangled where the EU would have to hold exclusive competences, as opposed to those in which the Member States are solely responsible. This is an, almost, impossible task, given that the current EU is based on shared competences. It is also most likely to confront resistance from smaller Member States with low institutional and economic capacities.

Secondly, the Member States would have to give up their strong representation in a European level in order to grant the European federation independence in exercising the already considerable curbed competences. The European Council and the Council of the European Union would be replaced by a senate representing the citizens rather than the governments of the individual Member States. The European Commission, with a directly elected president, would become a truly federal bureaucracy, that would have to

be considerably strengthened (including field services in the Member States) in order to execute European policies effectively.

Finally, given the strong, and with the enlargement even increasing, socio-economic heterogeneity of the Member States, the European federation would need a minimum of redistributive capacity. The example of the American federation which started off with hardly any 'taxation and spending' capacity is rather instructive.

The distinction between EU administrative law and EU constitutional law and between the EU constitutional framework and its administrative organisation is not defined. The competences and tasks of the EU are shared between different actors and institutions that act at different times as parts of the Executive and as parts of the Legislature, as administrators and decision-makers in all kinds of policy areas.

4. FEDERAL STRUCTURE AND EUROPEAN GOVERNANCE

The term "bureaucracy" applies to the slow, inefficient, and sometimes counter-productive process by which agencies handle the legal and operational details of their assigned services. Because the individual employees are tasked with limited and specific duties, they are often unable or unwilling to correct deficiencies which may result in hardship to affected citizens.

In Europe we need a common European administrative philosophy and structure.

We consider that this perspective could be expressed by a Europeanized governance method. A well-organized administrative structure where the division of responsibilities takes place as procedural norm can increase the administrative efficiency of the EU's governmental parts resulting to a sustainable administrative system. The image of the European Union given by the EU Treaties is composed of three (governmental) levels of government ((supranational, national and local) and three types of public policies (common, shared between national and European, and measures of accompany the national policies). The cross-sectoral comparison of trajectories of public action in Europe, shows the significance of a political logic that is (either) neither dominated by

supranational actors (Commission, European Parliament, European Court of Justice), or by elected (and) or national administrations.

The Government of the European Union is rather the product of ideological and institutional struggles that involve intense instrumentalization of the EU treaties and legislation, without being determined by them.

Federal Structure can have positive influence on the administrative and organizational future of the European Union and constitute a system very interesting for the European Union administrative and organizational future. It can have both, positive and negative, impact on the efficiency of the EU governance. However, still one can find more insufficiencies which constitute EU governance problematic. There are some problems that contribute to a more problematic government/governance.

The EU Government can address three issues simultaneously:

Firstly, the actors involved in European integration process, i.e. all the institutions and organizations involved in EU decision-making system, and the rules and constraints that shape their strategies,

Secondly, the interactions and interdependencies in the EU negotiation process.

Thirdly, the legitimacy, as the central issue of EU integration, that europeanizes standards and public policy.

The European constitutional system reveals a certain paradoxical character which nature and scope remain constantly contested as it was the evolution from a functionally restricted common market in the 1950s that became the cornerstone of the constitution of a more complex political organization known as European Union.

The paradox lies in what appears to be as, on one hand, a fundamental tension between the powerful political attachment to a traditional and high form of constitutionalism which is focused on limited EU powers, clarity in the division of competences between states and the EU, and the shaping of an effective and visible EU government on the one hand; on the other hand, and the reality of a highly reflexive and pragmatic form of governance that entails the expansion of EU activity in all policy fields into virtually all

policy fields; a profound degree of interference in terms of the sharing of competence between levels and sites of decision-making; and the existence of a dense and complex system of governance alongside the formal structures of government.

The European citizens expect the Union to take the lead in seizing the opportunities of globalisation for economic and human development, and in responding to environmental challenges, unemployment, concerns over food safety, crime and regional conflicts. They expect the Union to act as visibly as national government. Democratic institutions and the representatives of the citizens, at both national and European levels, can and must try to connect Europe with its citizens. This is the starting condition for a more effective policy-making process.

For the federal bureaucracy, the mechanism of the governance operates as a system of interconnected departments and agencies that deals with the administration of government programs. European governance concerns the analysis of European public policy aiming ultimately to europeanize the modes of public action.

The Treaty of Lisbon confirms three principles of democratic governance in Europe:

- **Democratic equality:** the European institutions must give equal attention to all citizens
- **Representative democracy:** a greater role for the European Parliament and greater involvement for national parliaments
- **Participatory democracy:** new forms of interaction between citizens and the European institutions, like the citizens' initiative.

The Lisbon Treaty is considered as a qualified choice for the future of the EU governance and represents an important step in EU decision-making itinerary. The most significant modifications, introduced by this Treaty, have monopolised the capacity of the European Institutions and the EU decision-making system to be adapted to EU enlargement institutional particularities and functional specificities. The extension of majority system and the extension of co-decision, as the ordinary legislative procedure, constitute two decisive innovations. These changes increase in efficiency and strengthen the formal democratic aspects of the process.

The first attempt to evaluate the impact of the Lisbon Treaty on EU decision-making system has to be interpreted under two perspectives.

Firstly, the resulting system by binding community multiple legal instruments is simpler and more efficient in terms of decision-making. *Secondly*, the foundations of the European Union are strengthened by the principal challenges for decision-making in terms of good European governance. This result seems to increase the procedural transparency and, essentially, its qualification, in offering the credibility.

Before Lisbon, the Constitutional Treaty focused its interest on the contrast between what is referred to as ‘traditional EU constitutionalism’ and ‘new governance’. The EU Charter of Fundamental Rights and the stimulation of a fairly wide- ranging debate on reform of European governance, and the formal recognition of a role for ‘civil society’ within the EU system of governance, all reflect increasing political recognition of the need for constitutional reform.

This institutional period of EU evolution, linked to the constitutionalization of EU Treaties, has been enormously influenced by five community principles, defining the good governance in EU: *openness, participation, accountability, effectiveness and coherence*. Each principle was important for establishing more democratic governance.

- **Openness.** The Institutions should work in a more open manner. Together with the Member States, they should actively communicate about on what is the role of EU while using a more approachable style for the public.

- **Participation.** The quality, relevance and effectiveness of EU policies depend on ensuring wide participation throughout the policy chain – from conception to implementation. Improved participation is more created with more confidence that in the end results in institutional policy efficiency.

- **Accountability.** **The** Roles of the EU institutional components in the legislative and executive processes need to be more distinct. Each of the EU Institutions must explain and take responsibility of their operational field for what it does in Europe. But there is also a need for greater clarity and responsibility from Member States and all those involved in developing and implementing EU policy at whatever level.

· **Effectiveness.** Policies must be effective and timely in delivering what is needed on the basis of clear objectives, an evaluation of future impact and, where available, of past experience. Effectiveness also depends on implementing EU policies in a proportionate manner and on taking decisions at the most appropriate level.

· **Coherence.** Policies and actions must be coherent and easily understood. The need for coherence in the Union is increasing: the range of tasks has grown; enlargement will increase diversity; challenges such as climate and demographic change cross the boundaries of the sectoral policies on which the Union has been built; regional and local authorities are increasingly involved in EU policies. Coherence requires political leadership and a strong responsibility on the part of the Institutions to ensure a consistent approach within a complex system.

This Treaty has clearly set out **the Union's objectives**, which include: working for sustainable development based on balanced economic growth; a competitive social market economy; aiming at full employment and social progress; protecting and improving the quality of the environment; promoting economic, social and territorial cohesion.

The Constitutional Treaty represented a step forward for local and regional authorities in the European Union. It reflects the efforts to increase the involvement of cities and regions within the procedures of the EU as a means to bring the Union closer to its citizens. The intention of the Constitutional Treaty was to help the European Union meet the challenges of achieving a democratic, transparent, efficient enlarged Union for all its citizens. The local and regional authorities could work as valuable intermediaries between the EU Institutions and the citizens.

The Constitutional Treaty gave greater recognition to the role of local and regional authorities in the European Union, by recognising the **principle of local and regional self-government** and reinforcing the **principle of subsidiarity** to include the local and regional levels. This means that before launching an initiative, it is essential to check systematically (a) if public action is really necessary, (b) if the European level is the most appropriate one, and (c) if the measures chosen can deliver the objectives

At last, it is necessary to know whether European integration is still dominated by inter-govern mentalist actors or whether this process follows logic where the actors receive more power from theories and practices inspired by neo-functionalism and neo – institutionalism .

5. FUNCTIONAL PRIORITIES AND OBJECTIVES OF THE EUROPEAN SOCIETY IN ORDER TO TRACK FEDERALIST PERSPECTIVE

European society would function poorly without legislation and a functioning court system. By setting rights and obligations, laws protect citizens, customers, workers and businesses against abuses and dumping rules. In the particular case of enterprises, there is a precondition for fair competition and hence for competitiveness.

This is the *raison d'être* of a large part of EU legislation, introduced to correct market failures and ensure a level playing field at continental level.

That protection can often only be secured through obligations to provide information and report on the application of legislative norms. Administrative obligations should therefore not be presented as mere 'red tape', a term normally reserved for needlessly time consuming, excessively complicated or useless procedures.

Nor should EU administrative obligations be presented as a mere cost factor, as it often replaces 27 different national legislations and thus decreases operating costs at EU level. On many issues, European business associations themselves have continued to ask for targeted harmonisation of rules as the best way forward in term of simplification.

Moreover, information requirements such as conformity testing and certification, also provide crucial indication on the boundaries of business liability and remediation, which is not negligible viewed against the background of what is sometimes described as a growing "compensation culture".

The EU constitutive legal instruments indicate that the European Commission should "take duly into account the need for any burden, whether financial or administrative,

falling upon the Community system, national governments, local authorities, economic operators and citizens to be minimised and proportionate to the objective to be achieved”.

In order to comply with the proportionality principle, the Commission already appraises the impact of proposed measures in terms of administrative burden and evaluates it when simplifying existing legislation, but does not have a single quantitative approach for doing so.

Analysis needs to follow basic rules, not least because as the methodology for obtaining data differentiates from case to case. Some efforts to minimise administrative burden have not involved quantification. In those cases, complaints and suggestions from targeted groups are gathered through public consultation; a high level group of experts then reviews the regulatory framework and makes recommendations for simplification.

The EU common methodology must be applied in a proportionate manner. It should only be applied when the scale of the administrative obligations imposed by an EU act justifies it and the effort of assessment should remain proportionate to the scale of the administrative costs imposed by the legislation.

Besides, adequate flexibility must be allowed when filling in the common reporting sheet. As for the number and the distribution of the Member States contribution, the evidence that have been gathered through pilot projects suggests that they do not yet provide a sufficient basis for assessing costs at EU level. Ideally, a majority of Member States should be willing and able to provide data. Member States should be encouraged to contribute to the process, while the Commission will of course retain responsibility for judging the costs of its proposals on the basis of its assessment of available evidence.

A minimalist approach would only require that the Member States provide data in a standardised manner on the labour costs, time and number of operators affected by an EU measure and its transposition into national legislation. Member States would not necessarily have to apply the EU common methodology to assess their purely national legislation.

The coexistence of very different methodologies at national and EU level would, however, increase significantly the overall assessment costs for Member States in terms of duplication and other efficiency losses. Convergence between national and EU methodologies would moreover ensure easy interoperability among databases and would offer greater economies of scale in term of data collection.

The added-value of a EU Common Methodology

On the basis of the findings of the pilot phase and the study of quantification efforts at Member State level, and despite the considerable optimisation, a great amount of work remains to be done on the Member States' level, lead the Commission to draw the following conclusions:

- (1) specific cost-based quantification helps in assessing measures from the point of view of those affected and taking into account the distributional effects of a measure;
- (2) specific cost-based quantification contributes to regulatory transparency (quantifying costs helps to make trade-offs more transparent, provided that the benefits including longer term benefits are also investigated);
- (3) specific cost-based quantification often provides a relevant indicator particularly when prioritising simplification work and monitoring progress in reducing administrative burdens, given the fact that (provided that) figures are put in proper perspective and methodological limitations properly highlighted;
- (4) quantification facilitates communication (communicating on simplification efforts is more effective when quantified results are provided; this is particularly true for the Union because, many EU measures being technical, their titles often mean very little for the wide public);
- (5) an EU common methodology would facilitate the comparison of performance and the identification of best practices;
- (6) EU common methodology would ensure that national data can be easily added up in view of assessing individual acts and/or cumulative burden at sectoral level.

There would be therefore net added value provided that an EU common methodology would not be at the expense of analysis of other impacts.

A common methodology does not mean having no flexibility at EU or national level. A methodology is made of several building blocks. In order to have a EU common

methodology, some must be used by all, others can be optional. EU institutions and Member States should remain free to introduce specific features in their methodology for assessing administrative burden imposed by legislation as long as the resulting figures

- can be easily compared and
- can be easily and reliably added up in view of assessment of cumulative burdens.

However, as already mentioned, the Commission considers that there can be no EU common methodology without the three following building blocks: a common definition, a common core equation and a common reporting sheet.

Assessing net administrative cost, as proposed by the Commission, seems preferable for a number of reasons. It would clearly show the extent of simplification efforts and dispel the impression that an EU engagement automatically means ‘new’ costs.

Moreover, it would be consistent with the Commission’s impact assessment guidelines and national Regulatory Impact Assessment manuals, as well as being in line with the first OECD guiding principle for regulatory quality and performance.

A net cost approach would have a clear advantage for those Member States which assess administrative burden systematically for two reasons. *Firstly*, with net figures there is no need to go through costly periodical assessment of the entire legislation into force. *Secondly*, consolidated figures can be produced at any time, which means that progress can be monitored on an ongoing basis (no need to wait for the general stocktaking exercise to know how total administrative burden evolved since the initial baseline measurement).

It is a common view that enlargement poses a severe challenge for EU structural and cohesion policies. Far less clear and uncontroversial, however, is the empirical and analytical basis for that statement. Three broad questions need to be addressed:

(1) What is the current state of economic and social cohesion in the applicant countries and how will, as a consequence, the situation in a future EU 27 differs from that in the current EU 15?

(2) How will enlargement itself affect cohesion via the expected intensification of economic integration?

(3) How long will EU structural policy have to deal with the challenges of enlargement?

The last enlargement was driven by moral force, as well as by political and strategic considerations. It was the EU's response, long overdue, to the tragic events of the 20th century. It was a bid for peace through integration, for stability through understanding and co-operation. These dividends are so clear and invaluable that it is not an exaggeration to call this enlargement truly "historic".

What is the added value of the EU enlargement? The added value is the expression of solidarity and the consolidation of peace and stability in Europe. Solidarity vis-à-vis countries with shared historic and cultural roots made it imperative for the EU member states to come to the assistance of their neighbours. Peace and stability would not only heal the wounds that years of isolation and mistrust had inflicted on European societies. Peace and stability would also fuel economic development and would maximise prosperity for all.

The offer of EU membership to Central and Eastern European countries was instrumental in achieving these goals. In order to be part of the EU family, root and branch reform of antiquated economic and political structures was a prerequisite. Once these structures had been replaced, the foundations for peace, stability and prosperity for the whole of Europe were set.

Beside the important issues of federalism and subsidiarity, institutions of direct democracy, like popular initiatives and (obligatory) referenda, could also be a crucial factor in a future European constitutional charter. They should be seen as a necessary supplement for the institutions of the representative democracy such as the proposed two chamber system and the European government.

6. CONCLUSIONS

Governance is not a simple role in the award of civil society in regional and central government structures. This is an innovative concept for the functioning of institutions and markets. This is a new proposal for the interpretation and application of the democracy in Europe, which for three centuries is characterized as the principal laboratory for the processing of the principles of the direct democracy.

The institutions of direct democracies also have other important means, such as their possible use by the voters to break politicians' cartels directed against them. The representatives have a common interest in forming a cartel to protect and possibly extend political rents. Referenda and initiatives can be means to break the politicians' coalition against voters. Initiatives require a certain number of signatures and if the initiators obtain these signatures they can force the government to undertake a referendum on a given (mostly disputed) issue.

They are a particularly important institution, because they take the agenda setting monopoly away from the politicians and enable outsiders to propose issues for democratic decision, including those that many elected officials might have preferred to exclude from the agenda.

As it has been demonstrated in public choice theory, the group determining which propositions are voted on, and in what order, has a considerable advantage, because it brings up, to a large extent, the issues that will be discussed and which ones will be left out. Referenda, whether obligatory or optional, enable the voters to state their preferences to the politicians more effectively than in a representative democracy. In a representative system, deviating preferences with respect to specific issues can only be expressed by informal protests, which are difficult to organize and to make politically relevant.

In an effort to summarize these findings, one can draw two conclusions: Cumulating research on the properties of a popular referendum has revealed two major aspects on which institutional economics has to focus. *One is the importance of discussion in the pre-referendum state.*

This implies that the number of propositions and the frequency of ballots must be low enough that the voters can have an incentive and the opportunity to collect and digest the respective information in order to participate actively in the decision.

The second element is that direct democratic institutions enable voters to break politicians' and parties' coalitions directed against them. Direct participation serves to keep the ultimate agenda-setting power within the voters. Initiatives and referenda are effective means by which the voters might regain some control over the politicians.

The introduction of direct democratic institutions like the referendum at the highest European federal level in European constitution is an absolute necessity, especially if the European federal government wants to change the tax structure or wants to take over new a policy field.

This can only be implemented if it is approved by the legislation of the two chambers and by a popular referendum and if it is approved by a majority of the states. The introduction of direct democratic elements was crucial for the adoption of the European constitutional Treaty so that the European government is being kept, strictly, to its given tasks. Especially the introduction of direct democratic elements could be an excellent tool in order to create an European identity. If European citizens have the capacity to decide about European Union matters, they will be better informed about European affairs (they will discuss it, they will learn about it and after sometime they will decide in an European way, and not only in a way, is it good for Romania Greece, for Germany or for Malta.)

In order to guarantee a further successful functioning of the enlarged European Union, a Federal European Constitution is proposed. Six basic elements of European federal constitution are developed:

- European Commission should be turned into European government and the European legislation should consist of a two chamber-ed system with full responsibility over all federal items.
- Three more (further) key elements are the subsidiarity principle, federalism and the secession right, which are best suited for (to) limiting the dominance of the

- Finally, direct democracy is another important feature, which provides the possibility for European citizens to participate actively in the political decision making, to break political and interest group cartels, and to prevent an unwanted shifting of responsibilities from EU member states to the European federal level.

The non-adoption of the Constitutional Treaty can be regarded as the failure of the perspective for the real federal coordinates for Europe. This weak institutional side of the European integration was not covered eventually by the Treaty of Lisbon. The future major treaty reforms should continue to be the principal requirement for the EU institutional system. The EU institutional system tries to increase its legitimacy and its good direct relationship with the European civil society. It seeks to express the dynamic relations of political forces across the global society from an observation of practice. This objective, inspired by Max Weber, analyzes in depth the relationship between government and society in national and local political spaces.

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