

EUROPEAN ECONOMIC AREA
JOINT PARLIAMENTARY COMMITTEE

M/20/R/030
17 October 2001
Brussels

REPORT

and

RESOLUTION

on

**New Governance of the EU and its implications for
the European Economic Area**

Co-rapporteurs: Mr Gary Titley (PES, United Kingdom)
Mr Jürgen Zech (Progressive Citizens' Party, Liechtenstein)

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I INTRODUCTION

1. The European Commission has identified the reform of European governance¹ as one of its four strategic objectives for the 2000 - 2005 period. The White Paper on European Governance, which was published on 25 July 2001, addresses – in the words of Commission President Prodi – the issue of “European democracy and how it works, why it doesn’t work better and what its prospects are.” In doing so, the Commission focuses on the sense of malaise and alienation that many Europeans feel towards the European Union. Despite its achievements, there is a strong sense of uncertainty about what the Union is and what it aspires to become, about its geographic boundaries, its political objectives and the way these powers are shared with Member States.
2. Five political principles - openness, participation, accountability, effectiveness and coherence underpin the proposals of the White Paper. These principles should guide the Union in the way it uses the powers given by its citizens and in how it will push forward changes. The assumption underlying the White Paper is that a great deal can be accomplished by carrying out reform under the present Treaty provisions. On the other hand, it is acknowledged that separating the reform of European Governance from the broader debate on the future of Europe triggered in Nice would be somewhat artificial, as these processes are two sides of the same coin.
3. Three aspects of European Governance are highlighted in the Paper: Firstly, the relationships between the citizens, organized civil society, central and local government and the European institutions; secondly, the quality and effectiveness of legislation; and thirdly, the way in which the European institutions operate and co-operate. Global governance is also touched upon, albeit emphasising that the Union’s first step must be to reform governance successfully at home in order to enhance the case for change at an international level.
4. The White Paper proposes opening up the policy-making process to get more people and organisations involved in shaping and delivering EU policy. It promotes greater openness, accountability and responsibility for all those involved, underlining that it requires effort from all actors to introduce change. This includes all the EU institutions, central governments, regions, cities and civil society.
5. Throughout the Paper, the call for a renewal and strengthening of the Community method runs like a scarlet thread. According to the Commission, this could be done by following a less top-down approach and complementing its policy tools more effectively with non-legislative instruments, such as social dialogue, structural funding, and action programs.
6. Following a consultative process, which will run until the end of March 2002, the Commission will report on the progress it has made and draw lessons from the White Paper consultation. The Commission will also actively participate in the preparation of the forthcoming European Council in Laeken. It will present its views on the political objectives, which should be pursued by the European Union and on the institutional framework necessary

¹ “Governance” is defined as rules, processes and behaviour that affect the way in which powers are exercised at European level, particularly as regards openness, participation, accountability, effectiveness and coherence.

to achieve these aims. In doing this, it will draw on the principles of the White Paper on Governance.

7. The following chapters deal with the Commission's proposals for change and reflect upon the possible implications for the European Economic Area.

II BETTER INVOLVEMENT AND MORE OPENNESS

8. Democracy depends on people being able to take part in public debate, the White Paper states. To do this, they must have access to reliable information on European issues and be able to scrutinise the policy process in its various stages. With the adoption of new rules in 2001 giving citizens greater access to Community documents, important progress has been made. However, the White Paper appeals to the Council and the European Parliament to do more by making information available more rapidly about all stages of the co-decision process, particularly the conciliation phase. The Member States are also requested to contribute more by promoting public debate on European affairs. Further suggestions for improving citizens' involvement are outlined below.

Regional and local actors

9. The White Paper calls for a more effective involvement of national and regional actors in the shaping, application and enforcement of Community rules and programmes. This should result from proposals on dialogue, decentralisation, stronger co-operation between administrations, and more effective enforcement of Community law.

10. The White Paper highlights the role of the Committee of the Regions as a vital forum for regional and local cooperation. However, the Commission will also establish a more systematic dialogue with representatives of regional and local governments, through national and European associations, at an early stage in the policy process. It furthermore vows to bring greater flexibility into how Community legislation can be implemented in a way, which takes account of regional and local conditions.

11. The Commission is also in favour of testing whether, while respecting the existing Treaty provisions, the implementation of certain EU policies could be better achieved by target-based, tripartite contracts between regions, localities, Member States and the Commission.

Civil society

12. The White Paper calls for greater involvement of civil society² in the shaping of EU policy. At the same time it stresses the need for organised civil society to follow principles of openness and accountability. An on-line Commission consultation database with details of civil society organisations should act as catalyst to improve internal organisation.

² The White Paper defines civil society as trade unions and employers' organisations (social partners), non-governmental organisations, professional associations, charities, grass-roots organisations, organisations that involve citizens in local and municipal life with a particular contribution from churches and religious communities.

13. Stressing the particular role and influence of social partners as laid down in the EC Treaty, the Commission wishes to encourage them to use the powers they have been given to reach binding agreements that are subsequently turned into Community law. The social dialogue at EU level is recognised as a key element in the process of governance, and an essential tool to find acceptable solutions, which meet the needs of labour market players.

14. The White Paper points to the new role of the European Economic and Social Committee as a bridge between the EU institutions and organised civil society, and calls on the Committee to play a more pro-active role in shaping policy (cf. changes to article 257 of the EC Treaty agreed at Nice).

More effective and transparent consultations

15. Calling for a “reinforced culture of consultation and dialogue” the White Paper insists on the need for all EU institutions and national authorities to improve their efforts to consult better on EU policies, so as to complement the decision-making by the institutions. In view of the lack of clarity about how consultations are run and to whom the institutions listen, the Commission has pledged to adopt minimum standards for consultations in the form of a code of conduct. It will furthermore develop more extensive partnership arrangements with certain sectors, in return for increased guarantees of the openness and representativity of the organisations involved.

III BETTER POLICIES, REGULATION AND DELIVERY

16. In the Commission’s view, legislation often includes an unnecessary level of detail, which leaves little room for policy execution. Adapting rules to technical or market changes can be a complex and time-consuming exercise. Overall the result is a lack of flexibility, which damages effectiveness. The following measures are proposed, in order to improve the quality of legislation, including better implementation and enforcement.

Expert committees

17. The opacity of the Union’s system of expert committees and the lack of information about how they work has led to a lack of public trust. With the purpose of building public confidence in the way policy makers use expert advice, the Commission will develop guidelines to open up the system for the use of experts to greater public scrutiny and debate.

Combining different policy instruments

18. To improve the quality of its policies and simplify the legislative process, the Union must – according to the White Paper – define policy objectives more clearly and improve effectiveness by combining legislation with non-legislative and self-regulatory solutions. In an Action Plan for Better Regulation (to be presented to the Laeken European Council in December 2001), the Commission will promote greater use of different policy tools, such as regulations, framework directives, guidelines, recommendations and co-regulatory mechanisms. These may be complemented where appropriate by the use of the open method of co-ordination.

Simplification of legislation

19. The Commission undertakes to limit its proposals for legislation to essential elements, while providing greater scope for implementing measures to complete the technical details of those proposals. Moreover, a programme will be launched to simplify further existing Community legislation and encourage Member States to simplify the national rules, which give effect to EU provisions.

Regulatory agencies

20. Underlining the role of regulatory agencies in reinforcing the effectiveness of EU law by bringing decisions in some of the most complex and technical areas closer to the people affected, the Commission pledges to set out the conditions for establishing such agencies and clarify the Community's supervisory responsibilities.

Better application of Community law at national level

21. The White Paper points out that more effective implementation and enforcement of Community law is necessary not only for the sake of efficiency of the Internal Market but also to strengthen the credibility of the Union. The prime responsibility for this lies with national administrations and courts. The Commission will, however, give its support by proposing an arrangement whereby national administrations can share best practice in implementing measures, and by promoting the awareness of Community law among national courts and lawyers. Furthermore, the Commission will establish criteria to focus its work in investigating possible breaches of Community law.

IV REFOCUSED POLICIES AND INSTITUTIONS*Refocused EU policies*

22. Refocusing policies means that the Union should identify more clearly its long-term objectives. The White Paper underscores the importance of public debate on the future of Europe and the EU's policies, stressing the particular role of the European Parliament and all national Parliaments in stimulating debate.

Refocused institutions

23. At the heart of the proposed actions of governance is the refocusing of the roles and responsibilities of the EU institutions to help citizens hold their political leaders and the institutions to account for the decisions that the Union takes.

24. To deliver better policies, the Union must revitalize the Community method and each institution must concentrate on its core tasks. In the view of the Commission, EU legislation should be stripped back to the essential and a framework should set out how it should be implemented. The Council and European Parliament should focus on political direction and content, leaving implementation to the executive.

25. At the same time as the role of the Commission as initiator of legislation is strengthened, the proposed measures for better consultation and involvement, a more open use of expert advice, and improved impact assessment, should lead to a more targeted and selective use by the Commission of its right of political initiative.

Comitology committees

26. The main responsibility for executing policy and legislation by adopting implementing regulations or decisions is normally conferred on the Commission. The conditions under which the Commission adopts those executive measures should be reviewed, according to the White Paper. To that end, the Commission will bring forward to the next Inter-Governmental Conference proposals to refocus the Commission's executive responsibility to allow for faster decision-making, and procedures that are easier to understand.

27. The White Paper presents the outlines of a model for how to achieve the above-mentioned task and clarify roles and powers between the legislature and the executive. Where decisions are taken jointly by the Council and the European Parliament, those two institutions should enjoy equal roles in monitoring execution, at the same time as the Commission must assume full executive responsibility. A simple legal mechanism should allow the legislature to control the actions of the Commission against the principles and political guidelines adopted in the legislation. Thus, the existing committee structure, notably regulatory and management committees, would become obsolete.

V IMPLICATIONS FOR THE EUROPEAN ECONOMIC AREA

28. The EU's dynamic determination to improve European Governance may well trigger a wave of Governance reforms throughout the world, from which the EEA EFTA States and the European Economic Area will not be unaffected. The matter of how, or if, to reform EEA governance is not dealt with in this report, which focuses exclusively on the renewal of EU governance and the possible effects this may have on the EEA.

29. It is clear that any renewal of political processes and decision-making systems in the Community – as is the case for the proposed reform of European governance – will have implications for the European Economic Area. New legal EC acts with relevance for the Internal Market must be incorporated into the EEA Agreement and, thus, the way in which decisions are reached in the Community, as well as the quality, effectiveness and simplicity of legislation, has bearing on the EEA. Some of the tangible reforms proposed in the White Paper, which may affect the EEA, are highlighted below.

Better involvement and more openness

30. *Publicity and debate:* The White Paper proposes opening up the policy-shaping process to get more people and organisations involved in the early stages of forming EU policies. This means that the EEA EFTA States will no longer enjoy a privileged position in the decision-shaping phase of EU policy-making. On the other hand, more transparency in the EU will facilitate access to information and open up new channels for influencing EU developments.

31. *Local and regional actors:* The White Paper stresses the importance of more involvement by local and regional actors in policy shaping at EU level, with a particular emphasis on European associations of regional and local government and the EU Committee of the Regions. The Association of Local Authorities in Iceland and the Norwegian Association of Local and Regional Authorities would, through their membership in the Council of European Municipalities and Regions, get a greater say in EU policy-shaping with the increased weight of their European umbrella organisation. However, the EU's Committee of the Regions did not yet exist at the time of the negotiation of the EEA Agreement, and thus there are no provisions in the Agreement regarding cooperation between local and regional actors at EEA level.

32. *Civil society:* Organised civil society at European level is increasingly becoming a platform for consultations, and this development will be pushed forward, according to the White Paper. For civil society actors in the EEA EFTA States, who are members of their European umbrella organisations, intensified consultations will give a greater opportunity to make their voice heard on EEA relevant matters. The on-line database CONECCS with details of civil society organisations at European level, which has recently been established by the Commission, shows that a substantial number of the listed European organisations have members in the EEA EFTA States.

33. *Social partners:* As for the social partners in the EEA, the cooperation between the EFTA Consultative Committee and the European Economic and Social Committee is ensured by the EEA Agreement. Moreover, social partner organisations in the EEA EFTA States are members of the European employers' organisations, UNICE and CEEP, as well as of the European Trade Union Confederation (ETUC). As such, they participate directly in the cross-sectoral Social Dialogue negotiations, which provide them with a unique potential of influencing EU/EEA social legislation.

34. *Consultations:* A new culture of consultation in the European Commission would give the EEA EFTA States, as well as other EEA actors and citizens, additional opportunities to be heard in the phase of EU decision-shaping. EFTA Comments is one of the tools the EFTA side possesses in order to influence EU policies. A revitalisation of this instrument is called for so as to ensure that EFTA views are known and taken into account in the Commission's consultation processes. Paradoxically, the number of comments from the EFTA side to the EU has decreased during the last four years, at the same time as the number of acts incorporated into the Agreement remains high.

Better policies, regulation and delivery

35. *Expert Committees:* Article 99 of the EEA Agreement regulates the preparatory and decision-shaping phase of the EEA decision-making procedure. It provides that as soon as new legislation is being drawn up by the Commission in a field, which is governed by the EEA Agreement, the Commission is informally to seek advice from experts of the EEA EFTA States in the same way as it seeks advice of Community experts. A more open system for the use of expert advice in the EU policy-shaping could give the public in the EEA EFTA States improved possibilities to scrutinise the work of the EEA EFTA representatives.

36. *Different policy instruments:* In recent years, soft law and soft integration have supplemented the traditional EU method of legal harmonisation. A clear shift has occurred from traditional regulations, directives and decisions which, given their EEA relevance would be integrated into EEA legislation, to new policy instruments such as guidelines, recommendations, co-regulatory mechanisms and the open method of co-ordination. These cannot easily be incorporated into a legally binding agreement such as the EEA Agreement. With the Commission's determination to promote greater use of different policy tools, as a complement to legislation, it must be considered how the dynamism of the EEA Agreement can be maintained. To ensure parallel development and equal conditions of competition throughout the EEA, the EEA EFTA States will have to take into account non-legislative developments in the EU, which have an impact on the Internal Market.

37. *Regulatory agencies:* With the aim of improving the way in which rules are applied and enforced across the Union, the Commission wishes to boost the creation of sectoral regulatory agencies with specific defined tasks, along the lines already established in EMEA³ and being established for a European food safety authority. The White Paper presents proposals relating to the conditions for establishing such agencies at EU level. For the EFTA side it is significant to ensure membership in new EEA relevant agencies, by participating in the setting of criteria for establishment.

38. *Better application:* Ultimately the impact of Internal Market rules depends on the willingness and capacity of the EEA Member State authorities to ensure that they are transposed and enforced effectively, fully and on time. With efforts by the Commission to step up investigations into possible breaches of Community law in the EU Member States, the EEA EFTA States might come under increased scrutiny by the EFTA Surveillance Authority. Two of the EEA EFTA States, Norway and Iceland, have had high and persistent transposition deficits,⁴ which can lead to a situation where individuals and economic operators are not able to realise their rights under the Agreement. In order to improve the quality of transposition and implementation of legislation, the EEA EFTA States could contribute to improving the knowledge of Community/EEA law among citizens, national courts and lawyers. Moreover, they could participate in the EU's proposed sharing of best practice regarding implementing measures, among national administrations.

Refocused policies and institutions

39. *Community method:* Somewhat in contradiction to the White Paper's stance on using different policy instruments, including the open method of co-ordination, it calls for strengthening of the Community method and a concentration by the different institutions on core tasks. A revitalisation of the Community method would clearly be advantageous for the EEA EFTA States, considering that the EEA Agreement is based on the assumption that the Community method is the main policy procedure in the Community.

³ The European Agency for the Evaluation of Medicines (London) makes a technical assessment of applications for the approval of new medicines prior to a Commission decision.

⁴ See Single Market Scoreboard for the EFTA States no. 8.

40. *Comitology*: The prospect of reducing – or even phasing out – the formal comitology committee structure would have great implications for the EEA EFTA States. Pursuant to the provisions of Article 100, the EEA Agreement has been the gateway to EFTA participation in many of these committees. For the EEA EFTA States, participation in EC comitology is a very important channel for exchange of view and information with experts in the EU Member States and in the Commission. Therefore, the EFTA side might want to ensure that its views are taken into account in the process of reforming the comitology system.

RESOLUTION

On New Governance of the EU and its implications for the European Economic Area

The Joint Parliamentary Committee of the European Economic Area:

- A. in accordance with its task laid out by the EEA Agreement (Article 95, paragraph 4),
- B. emphasising that the EEA EFTA States are not third countries in matters concerning the Internal Market, but full participants,
- C. noting that the information and consultation process provided for by the EEA Agreement is an essential tool for the EEA EFTA States to shape common rules,
- D. recalling its resolution on EC comitology and the EEA (adopted at its 16th meeting in Vaduz, Liechtenstein, 20 June 2001),
- E. recalling its resolutions on the Annual Reports on the Functioning of the EEA Agreement in 1999 and 2000 (adopted at its 14th meeting in Oslo, 24-25 May 2000, and at its 16th meeting in Vaduz, Liechtenstein, 20 June 2001),
 1. welcomes greater openness and transparency in the European Commission's consultation processes but stresses that the core of the policy-making has to stay within the democratically accountable and responsible institutions;
 2. underlines the importance of setting clear criteria to guarantee the representativity and accountability of civil society organisations, consulted by the Commission;
 3. notes the role of civil society actors in the EEA, in particular social partners, in shaping EU policy;
 4. regrets the lack of provisions in the EEA Agreement regarding cooperation between local and regional actors at EEA level;
 5. reiterates its concern about the steady decrease during the past few years in the number of EFTA comments and urges the EEA EFTA States to use this tool more actively in order to ensure that EFTA views are known and taken into account in the Commission's consultation processes;
 6. welcomes a more open system for the use of expert advice in the EU's policy-shaping process, which will give the public in the EEA improved possibilities to scrutinise the work of expert committees;
 7. emphasises that while the use of "softer" forms of regulation, alternative to legislation, suits the different requirements of EU intervention, concrete steps should be taken to ensure effective control and accountability of these new instruments of policy-making;

8. stresses the importance of ensuring that new solutions such as co-regulation or tripartite contracts do not have a negative impact on the rule of law across the EEA;
 9. calls on the EEA EFTA States to take into account non-legislative developments in the EU, which have an impact on the Internal Market, to ensure parallel development and equal conditions of competition throughout the EEA;
 10. highlights the significance for the EEA EFTA States to participate in the setting of criteria for the establishment of new EEA relevant regulatory agencies, in order to ensure membership in such agencies;
 11. notes with concern the high transposition deficit in Norway and Iceland and calls on the EEA EFTA States to participate in the EU's proposed sharing of best practice regarding implementing measures, in order to improve the quality and speed of transposition and implementation of legislation;
 12. reiterates its support for EEA EFTA participation in EC comitology committees and calls on the EU side to ensure that the views of the EEA EFTA States are taken into account in a possible process of reforming the comitology system.
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