

The new discourse on the Method

Jean-Paul Jacqué

Notre Europe has launched the debate by publishing two Policy briefs¹ on the community method of EU policy-making.

Jean-Paul Jacqué² takes a stand³: after drawing a distinction between the community method and the intergovernmental method, he explains why the latter has become necessary, especially because of the weakening of the European Commission.

Debates on the method to use to achieve a union of Europe are as old as European integration itself. Isn't a feature of the opposition between the intergovernmental method and what has become the community method the creation of the Council of Europe, an intergovernmental organisation, and the European Coal and Steel Community, the first European integration organisation? And the debate has continued within the integrated Europe. Here, we can think back to the Fouchet plan or the Maastricht Treaty with its structure including an integrated pillar and two intergovernmental pillars. Despite the elimination of the pillars, the Lisbon Treaty has relaunched the debate.

The fact that the European Council has been enshrined as an EU institution is of course only a largely symbolic change but the innovation of the permanent presidency of the European Council seems to have changed the situation to the detriment of the Commission. Member states have shown more confidence in the President of the European Council than in the President of the Commission and have tasked him with studies and proposals which, at the time of the Delors Commission, would have been entrusted to the President of the Commission. In an article⁴ published in the newspaper *Le Monde* on 10 March 2011, the President of the liberal group in the European Parliament and the former Belgian Prime Minister, Mr Guy Verhofstadt, thinks that "the rise in the power of the European Council is damaging the institutions of the Union". He stresses that this situation has

¹ Paolo Ponzano, « [Intergovernmental method or community method: an irrelevant debate?](#) », *Notre Europe, Policy Brief*, No. 23, February 2011 and Philippe de Schoutheete, « [Decision-making in the Union](#) », *Notre Europe, Policy Brief*, No. 24, March 2011.

² Jean-Paul Jacqué is a professor of universities at the College of Europe in Bruges and a director in the legal service of the Council of the European Union.

³ This contribution was published in the form of an editorial in the *Revue trimestrielle du droit européen* [Quarterly European law review] (n°2, April-June 2011). It is reproduced here with the author's consent.

⁴ Guy Verhofstadt, « [Quand les grands pays européens s'entendent pour imposer leur loi aux petits](#) » [When the big European countries agree to impose their law on the small ones], *Le Monde*, 10 March 2011.

led to "entrusting the reins of Europe to Germany alone" to the detriment of small member states and calls for a return to the "community method", i.e. a reawakening of the Commission. That is a reaction to Mrs Merkel's speech at the College of Europe in Bruges, which favoured neither of the two methods but set out a third way, a "Union method". She fell in with Mr Van Rompuy's observation according to which the choice is sometimes not between the two methods but between intergovernmental coordination or nothing.

In summary, we are witnessing a new episode in the old debate on the best way to move forward towards European unity. But is castigating one or the other method the best way to account for the current reality of European integration?

Community method and intergovernmental method: what are we talking about?

In the first place, it makes sense to define what exactly we mean by community method and intergovernmental method. If one was to oppose integration and cooperation, that would mean forgetting that, from the first steps made in European integration, cooperation has been a traditional method of intervention for the community and that the Lisbon Treaty has set that down in stone in its classification of competences as so-called "complementary" competences⁵. If one was to start from the decision-taking method by opposing unanimity and qualified majority, one would be forgetting that, in both cases, we are looking at decisions taken by the EU's institutions and for which implementation is controlled by the Commission. For Paolo Ponzano, "the 'pure' community method corresponds to a system in which the Commission - the institution representing the general European interest - holds the monopoly of legislative initiative [...] while the Council [...] and the European Parliament [...] adopt European laws by codecision. In addition, the Council generally votes by qualified majority, with unanimity being needed to amend the Commission's proposal"⁶. It is worth noting that an 'impure' community method would arise in all the scenarios in which the Council alone is given the power of decision and possibly where the Council, even in codecision, delivers its position by unanimity. Finally, the author says nothing about what seems to be an essential aspect, i.e. the supervision exercised by both the Commission and the Court of Justice of the European Union

As often in this subject area, the vision put forward is primarily ideological in nature. The argument is that the 'good' lies in transposing parliamentary federalism to European integration and the 'bad' lies in cooperation between member states. The federalism that is envisaged is often a simplistic one that barely fits with the much more subtle nature of numerous contemporary federal systems which also give way to a large extent to the coordination of policies led by their component parts. This analysis is also mistaken about the fact that, applied in this way, a parliamentary system could prove to be extremely centralising to the extent that it would involve decisions being taken based on ideological criteria to the detriment of national idiosyncracies.

⁵ Article 2, paragraph 5, Treaty on the Functioning of the European Union.

⁶ Paolo Ponzano, « [Intergovernmental method or community method: an irrelevant debate?](#) », Notre Europe, *Policy Brief*, No. 23, February 2011.

However, our interest lies not in challenging the advantages of the community method but in assessing its limits by looking back over time.

The intergovernmental method, a necessary alternative to the community method

Use of the intergovernmental method has imposed itself in areas where the nature of problems encountered by countries required joint action but where the political sensitivity of the issues addressed prevented full integration. Experience has shown that, after a certain period of time, cooperation between countries generates mutual trust which allows for the transition towards a more integrated method. This approach is facilitated by the fact that countries weigh up the limits that using consensus or unanimity bring with them. If this use allows a country to prevent the adoption of measures that it does not like, it also allows its partners to oppose measures that it likes. The requirement for efficiency in policies favours the transition to the community method. This is the path that was pursued for justice and home affairs from Maastricht to Lisbon.

In other cases, limits imposed by the treaties lead to use of the intergovernmental method. The distribution of competences between the Union and member states does not always make it possible to respond to the demands of the time. This is particularly true in economic and social issues. Neither the Union alone nor member states alone can act efficiently. Only coordinated action can deal with the challenges. In these conditions, coordination makes it possible to define overall objectives that everyone will be able to implement in the context of their competences. The Lisbon strategy and the open method of coordination are illustrations of this phenomenon and are also evidence of the weaknesses of a system that is largely based on the lack of legal obligations with regard to member states.

What else did the German Chancellor say when she set out what she meant by "Union method"? It was not about rejecting the "community method" but showing how it could go hand in hand with the intergovernmental method. " If all the major stakeholders – the Union institutions, the member states and their parliaments – complement each other by acting in a coordinated manner in the areas for which they are responsible, the immense challenges facing Europe can be tackled successfully. Who is responsible for what is very clearly defined. We wanted a self-assured European Parliament, which under the Treaty of Lisbon now legislates on a par with the Council. We wanted a European Commission that is a fertile source of ideas and retains its monopoly to initiate legislation. It remains the guardian of the Treaties; that is absolutely as it should be. And we wanted the European Council to be an institution with a permanent President. That means the Heads of State and Government of the 27 member states and the President of the European Commission lay down jointly with the President of the European Council guidelines on how the Union should develop. [...]Perhaps we can agree on the following description of this approach: coordinated action in a spirit of

solidarity – each of us in the area for which we are responsible but all working towards the same goal. That for me is the new "Union method"⁷.

The guidelines of the action are set out by the European Council in accordance with the mission that is attributed to it by the Treaty on the European Union. Concrete implementation comes into play on a case by case basis, and sometimes at the same time, through EU law for the community method and through the coordination of national policies for the intergovernmental method. It is also worth noting that, up until now, this method has been applied in areas for which the treaty envisages cooperation only, i.e. economic policy and the common foreign and security policy. So it would be in bad faith if one were to chide the European Council for having fulfilled the task that it was assigned by the treaties.

The weakness of the European Commission

In truth, this is not where the major difficulty lies as this is a straightforward application of the treaties. The real problem is political and lies in the remarkable weakness of the Commission. When, during the Delors Commission, the intergovernmental method was used, the President of the Commission maintained a primary role. It was up to him to formulate initiatives and put them into practice when he had received the member states' approval. Nowadays, this task has been given to the President of the European Council, who is tasked with preliminary studies, reports and the forging of compromises, all tasks of which some could be taken on by the Commission, which has a big and competent administration.

Of course the Council's conclusions give tasks to the President of the European Council together with the President of the Commission but this is more often about style rather than substance. The real problem of the EU is not really the method but the lack of member states' confidence in the Commission. The intergovernmentalisation of the Commission, its growing dependance on the Parliament alone as well as its timidity with regard to member states have contributed to a loss of confidence that has come about at a time when it is essential that a voice expressing the common interest of the EU makes itself heard. Then it is up to the Parliament and Council to choose another path if they want to. While the Commission has maintained a major role as guardian of the treaties, it has no more than a secondary and technical role in terms of [legislative] initiative. But that's another story...

⁷ Speech by Federal German Chancellor Angela Merkel during the opening of the 61st academic year at the campus of the College of Europe in Bruges on 2 November 2010:
http://www.bundesregierung.de/nn_6516/Content/EN/Reden/2010/2010-11-02-merkel-bruegge.html