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Community and intergovernmental method: an irrelevant debate?

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Paolo Ponzano, obtained a political science degree in 1967. From 1969 to 1970, he worked as both a university assistant in International Law and as member of the International Affairs Institute. Then, from 1971 to 2009, Ponzano served as a civil servant for the European Commission. Most of his career took place in the Secretariat-General of the Commission, where he was Director of Relations with the Council of Ministers. From 1995 to 2001, he also represented the Commission in the Committee of Permanent Representatives (COREPER). After this, Ponzano served as the Director for Institutional Affairs and "Better Regulation". In 2002 and 2003, Ponzano served as an alternate member of the European Convention. Currently, Ponzano is the Special Adviser of the Vice-President of the European Commission, Maros Sefcovic, and a Senior Fellow for the European University Institute in Florence. He has taught European Union Institutional Law and European Union Governance in many universities and he has written several articles on European Union institutional questions and on the European Union decision process.

The two methods

The recent positions taken by the German Finance Minister, Wolfgang Schäuble, in favour of applying the intergovernmental method to economic governance as well as the federal government's proposals on the formation of an economic government in the eurozone, have relaunched the debate on the use of the intergovernmental method rather than the community method in the application of the Treaty of Lisbon and, more generally, in pursuing the European integration process.

That follows what was called the "Speech on the method of EU decision-making", i.e. the speech given by Germany's Chancellor Angela Merkel in Bruges on 2 November 2010, in which she suggested moving beyond the old argument between the community method and the intergovernmental method in favour of a new method, namely the "Union method", which she defines as follows by first referring to a declaration by the European Council President Herman Van Rompuy: "In most cases, the choice is not between the community method and the intergovernmental method but between a coordinated European position and no position at all." "In other words," she goes on, "a coordinated European position is not necessarily the result of the application of the community method. This common position is sometimes an outcome of the intergovernmental method. The main thing is to have a common position on important issues." Pursuing her reasoning, the chancellor added: "Perhaps we could agree on the following description of this approach: a coordinated action in a spirit of solidarity, each one of us [Ed: EU institutions and member states] in the sphere which comes under their responsibility but while focussing on the same aim. For me, that is the new 'EU method' which we so need [...]"

At first sight, the Chancellor's remarks - just like those by President Van Rompuy - seem full of good sense. Who could be against a coordinated action by the EU that would allow it to set out a common position on the most controversial issues in discussion with the EU institutions and member states? But, when you dig deeper, you realize that the new EU method advocated by the Chancellor is a lot like - her speechwriter would not mind my saying so - the famous Hegelian night in which all the cows are black. The Treaty of Lisbon envisages the application of the ordinary legislative procedure (namely the aforementioned community method) for all areas coming under EU competence whilst the intergovernmental method is essentially reserved for the foreign, security and defence policy (although the initiative of member states goes hand in hand with that of the High Representative for the Common Foreign Security Policy). One might wonder therefore which areas the new EU method advocated by the Chancellor should apply to if not to the areas to be found outside the EU's competences (for example retirement). If, however, it was to apply to all

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resources. The European general interest would therefore demand not just a resulting increase in the EU's budget but also the establishment of a new own resource that would make it possible to give new flexibility to the EU's budget at a time when national budgets will not be able to take on new expenditure because of the budgetary discipline that they will have to respect.

c) An EU energy policy

The Treaty of Lisbon stipulates in its Article 194 (Treaty on the Functioning of the European Union) that the EU's energy policy aims, inter alia, in a spirit of solidarity between member states, to ensure security of energy supply in the EU. This objective should be achieved via measures adopted according to the community method (proposal from the Commission, decision by the Council by qualified majority and codecision with the European Parliament, except for fiscal measures). But the European Council is now talking about an energy strategy concerning both completing the energy Single Market, security of supply and the EU's action towards its main partners. Of course, political orientations from heads of state and government would be very useful in encouraging the Commission to propose legislative measures and, if possible, draft agreements with the third countries concerned.

However, it is important not to underestimate the danger that the political orientations of heads of state correspond to a minimum common denominator between the different interests of the energy resource producer and consumer countries. For example, the EU might need to put in place a real agency for energy supply tasked with executing agreements reached in the meantime by the EU with producer countries, which would allow some EU countries to gradually free themselves of their energy dependence on these countries (in accordance with the spirit of solidarity between member states set down in the Treaty). But will this objective be achievable via the intergovernmental method? Would it not be preferable to use the community method, which has, for example, allowed a common fisheries policy (in spite of the difference in interests between countries with fish stocks and the others) and the realization of the aforementioned Galileo project?

Conclusions

The conclusions of the European Council of December 2010 on economic governance envisage amending Article 136 of the Treaty of Lisbon by entrusting eurozone member states with the power to set up a stability mechanism that will be activated if it is essential to preserve the stability of the eurozone as a whole. Irrespective of the doubts already expressed by several economists as to whether this instrument would be sufficient to safeguard the Single Currency, this provision innovates by introducing an intergovernmental competence in a framework governed mainly by the community method. We know full well that this solution aims to avoid a fresh transfer of powers to the EU's institutions, which could not be the subject of a simplified Treaty revision procedure and would probably mean having a referendum in some countries. However, the European Union might not be kept in the straitjacket of its current competences if the necessity to expand them were to appear in the clear light of day.

In addition, using the intergovernmental method in the aforementioned subjects runs the risk of coming into conflict with the competences already attributed by the Treaties to the EU's institutions and leading to decisions based on the minimum common denominator and even on the predominant interests of some member states (see above). However, what precedes confirms, it seems to us, the more balanced and more satisfactory nature of the community method for the EU and, within that, of the role played by the Commission in identifying the general interest of the EU.

As Jean Monnet said in his memoirs, «Putting governments together and making national administrations cooperate starts with good intentions but fails as soon as there are differences in interests if there is no independent political body capable of taking the common view and coming to a common decision.» This statement, drawn from a lot of experience of intergovernmental cooperation, still seems relevant to us in the current phase of the process of European integration ■

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areas, whether they are in the EU's competence or not, we would be talking about a Hegelian night...

Let us know look at the difference between the community method and the intergovernmental method. It is explained well in the contribution that the representatives of the European Commission (Commissioners Barnier and Vitorino) submitted to the European Convention in April 2002. 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 (namely the ability to propose laws) while the Council - an institution made up of representatives from the governments of the member states - and the European Parliament - an institution representing European citizens - adopt European laws by codecision. In addition, the Council generally votes by qualified majority, with unanimity being needed to amend the Commission's proposal. By contrast, the intergovernmental method aims at a decision-making process in which member states negotiate a common position on different files among themselves and as sovereign powers without any obligation to be coherent or transparent. In addition, states take decisions by unanimity and without the European Parliament being involved, which generally leads to a search for the lowest common denominator between the member states' respective positions.

eyond these general definitions, what are the main differences between the two methods? The community method gives the European Commission the task of analyzing national positions and consulting all the interested parties before identifying the general European interest, which does not necessarily equate to the sum of national interests of the member states (a well known example: member states could have an interest in increasing their fishing capture quotas individually while the EU as a whole could have an interest in reducing them in a particular year to preserve fish stocks for the future). As a result, the Commission is not obliged to look for the lowest common denominator between national positions or laws because the European interest in a given file could be to choose the most advanced national legislation (for example Finnish legislation in electronic commerce) or an original solution that takes more account of the interests of some member states (for example producer or consumer countries in the definition of a European energy market). Of course, the Commission does not have a monopoly on truth. It can get things wrong. In these cases, it is up to the Council deciding by unanimity and the European Parliament deciding by a majority to amend the Commission's proposal.

The intergovernmental method is quite different. The proposals for a solution to a given problem come from the member states individually or from an administrative body which, as it is familiar with the national positions, seeks to identify the lowest common denominator that will allow member states to reach unanimity more easily. So there is no research in advance into the general interest that may be different from the sum of the interests of states that are taking part in the negotiation. In addition, the need to gain unanimity among member states necessarily gives 'big' countries more weight in negotiations whereas all the countries are put on an equal footing in the majority decision procedure (with their different populations reflected in their different voting weights) and can be isolated one by one if they do not agree to the concessions needed to reach unanimity. Thus, Germany was often the country that was most isolated in the 90s during talks in the Council to complete the Single Market (given its more general interest in achieving this objective). Finally, the fact that it is impossible for the European Parliament to exert real influence in the intergovernmental method generally results in a reduction of the level of ambition of the solution agreed to by member states. One should not forget that the Treaty of Lisbon deleted the provision in Article 67 of the old Treaty on European Union according to which each member state had the right of initiative in the framework of the third pillar for the benefit of a right of initiative recognized in granted to a quarter of member states. That means that member states themselves have recognized that national legislative proposals were too slanted to the interest of the countries that took the initiative and that they did not take sufficient account of the European interest.

Before drawing conclusions on the relative value of the two methods to facilitate the process of European integration, let us briefly examine the potential consequences of the application of the two methods to certain hot issues.

Hot issues

a) Economic governance

The intergovernmental method was behind the work of the task force chaired by Mr Van Rompuy, which resulted in conclusions based on the lowest common denominator of national positions. However, France and Germany would like to dilute the report of the task force in providing for the political and non-automatic nature of sanctions to be imposed on member states that would not comply with the

rules of the new Stability and Growth Pact. In other words, the Commission would not have the power to impose sanctions on countries that would breach the provisions of the new pact (barring a decision of the Council deciding by qualified majority), but it could only send recommendations to the Council, which would have to decide positively in favour of imposing sanctions for the countries in breach of the rules. But the experience of the excessive deficits' procedure during the Prodi Commission has already shown that finance ministers are not ready to put the country or countries in breach in a minority, especially if they are 'big' member states. The inability to punish some countries for going over the 3% of GDP (Gross Domestic Product) threshold was at the root of the flexibility introduced into compliance with this same rule, which has made it easer for several member states not to respect this threshold during the economic crisis. That is why the Commission's proposals on economic governance go further by envisaging the possibility of imposing quasi-automatic penalties on member states in breach based on their not meeting objective criteria and not on 'political' criteria which are difficult to ensure are met. Member states have debated Commission proposals and are due to reach a final agreement with the European Parliament in June, in conformity with the community method.

A similar conclusion could be applied to the proposals designed to strengthen the coordination of economic policies as a necessary complement to the Single Currency. Several well regarded economists argue that a monetary union without a common economic policy would not survive for long unless complementary mechanisms designed to counter international financial speculation were put in place. For this purpose, these economists advocate either creating an automatic solidarity mechanism that would work in favour of countries in financial difficulty or creating Eurobonds allowing the EU's institutions to intervene in the markets or both instruments together. But the 'proposals' made by some member states on the issue (for example the joint proposal by Mr Juncker and Mr Tremonti) have so far been rejected by the German and French governments without a real debate in the EU being set in motion. It is true that proposals coming from the European Commission would come up against the same political difficulties but the good thing about the community method is that these proposals would be put on the agenda of Council and even European Council sessions, that they would be the subject of resolutions voted on by the European Parliament and therefore they could not be dismissed with a wave of the hand by two member states, even if they were two big countries. With regard to this, it is worth remembering the case of the Galileo project, when the Commission's proposal had sparked opposition from at least three member states, including two 'big' countries (Germany and the UK) right from the outset. However, the Commission stuck with its proposal and provided answers to the many questions/reservations formulated by countries against the plan (in particular on the use of private finance). Finally, after years of talks, the Commission, with the support of the European Parliament, got its way.

b) The European budget and new own resources

The Treaty stipulates that the European budget is established by the budgetary authority (European Parliament and Council) whilst respecting the multiannual financial framework and on the basis of a proposal from the Commission. It is up to the Commission to propose the expenditure to finance every year within the limit of own resources available. The Commission also has the right to propose new categories of own resources just as it is up to it to seize the Council and the European Parliament of the document that will serve as the basis for negotiations on the new multiannual financial framework.

This procedure would run the risk of being distorted if the member states had to negotiate both the annual budget and the multiannual financial framework amongst themselves without having proposals from the Commission aiming to identify the general European interest. But there is a danger of that happening now that some member states (Germany, France, the UK, Austria and Finland) have sent an official letter to the EU institutions indicating that the European budget must not go above the EU's rate of inflation until 2020. In other words, all the EU's budget analysis work and consultation of the parties concerned on the priorities for expenditure carried out by the Commission - and which should lead to its 'proposal' for a new financial framework for the years from 2014 to 2020 - are in danger of being undermined by a negotiating position defined in advance by some countries who are net contributors to the EU's budget. If we translated the position of these member states in political terms, it would lead to fixing the current structure of the EU's budget because France will want to keep farming expenditure, Germany will be against increasing cohesion-related expenditure and the UK will want to keep its rebate. Yet it seems clear that, if the EU wanted to use the new competences granted to it by member states in the Treaty of Lisbon and to achieve the 2020 strategy's objectives - approved by the European Council - it should have a considerably higher budget than it currently does.

If we look at the EU's research policy, member states have no chance of reaching the threshold of 3% of GDP dedicated to research in 2020 in the current situation of dwindling national public