

On the Community Method by Richard Corbett

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

Richard Corbett² takes a stand: he reminds that even though there is a range of decision taking procedures in the EU, the more supranational procedures are more and more frequent. Fear of a more intergovernmental EU, especially with the more important role of the European Council, must be nuanced. Indeed the example of the European Stability Mechanism shows that an intergovernmental structure can be more communautaire than expected.

The EU's founding fathers were faced with a challenge. If the Member States wanted to pursue common policies in certain fields, should they hand over responsibilities to a common institution, and leave that institution to get on with it, which would pose questions of democratic accountability? Or should policies be settled by agreement on every detail between national governments, thus risking endless intergovernmental negotiations and lowest common denominator agreements?

In the end they opted for a compromise: a common institution – the European Commission – was charged with proposing policy (and with implementing certain policies once they were agreed). But a separate institution – the Council – consisting of ministers from national governments would take decisions on the basis of those proposals – and only on the basis of these proposals. A key factor was that a qualified majority could approve a Commission proposal, whereas unanimity was necessary to change it.

This interplay of an institution charged with identifying the common interest and one composed of representatives of national governments is the essence of what became known as the 'Community method'.

A range of decision taking procedures

But it was never used for all types of decision (some crucial decisions continued to lie with the Member States by common accord, or with the Council acting by unanimity), it had variations (such as Council acting on a Commission recommendation, meaning it can change the proposal by a qualified majority), and it has continued to evolve, not least through the greater involvement of the institution directly representing citizens (the European Parliament).

What we therefore had – and still have – was a range of decision taking procedures, tailored according to the subject matter being dealt with and the degree of integration involved, ranging from the quasi-federal to the largely intergovernmental. For instance:

- On competition policy, enormous leeway is given to the Commission, as the day-to-day executive, to police the single market, without the need to refer individual decisions to the Council.

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.

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- When it comes to most EU legislation (on the environment, consumer protection, the operation of financial markets, trade and so on), the Commission must propose to the Council, which can adopt its proposals by a qualified majority (normally, now, with the Parliament).
- In other areas, such as tax harmonisation, the Commission proposes, but Council needs unanimity to approve.
- When it comes to foreign and security policy, Council acts, by unanimity, without needing a Commission proposal.

Furthermore, each of these procedures has variants. They must also be analysed in their context: in some policy areas, majority voting in the Council, whilst possible, is exceedingly rare (though the fact that it could happen is a powerful incentive for a recalcitrant State to compromise rather than be outvoted). In others, there is a unanimity requirement, but the sheer pressure for a decision has (at least sometimes) prevented paralysis. Above all, the linkages between different policy areas mean that all Member States have a common interest in the system working.

A steady shift in favour of the more supranational procedures

Over time, and over successive treaties, there has been a steady shift in favour of the more supranational procedures. Five treaty revisions in a period of a quarter-century (the Single European Act, the Maastricht Treaty, the Amsterdam treaty, the Nice Treaty and the Treaty of Lisbon) have cumulatively had a significant effect:

- The breadth of EU competences (its field of responsibility) has been increased to fields that were not explicitly envisaged in the original treaties, such as police and judicial co-operation, foreign and security policy, a single currency and the environment.
- The scope of qualified majority voting has been broadened in each and every one of those treaties.
- The European Parliament has obtained legislative power and is now half of a bicameral legislative authority with the Council.
- The Commission's accountability to the Parliament has been strengthened as has, to a degree, its executive powers.

It is striking that in some policy fields where the EU initially had no competence, the first steps were taken through procedures requiring unanimity in the Council, a minor role for the Commission and the Parliament, and avoiding the use of binding legislation. Subsequently, the procedures were shifted towards the more integrated end of the spectrum. However, this process has not been even. It has been spectacular in some aspects of justice and home affairs, but in the field of foreign policy and security, Member States have not agreed on the necessary treaty changes to make majority decision taking the norm, nor to empower the Commission.

Despite this long-term trend, there are fears that the EU has become more intergovernmental with Member States asserting or reasserting their supremacy. This can be seen most notably in the field of the EU budget. The definition and the overall ceiling on EU resources always required the unanimous approval of every Member State and national ratification. Now, even the annual budgets must be set in a Multiannual Financial Framework, also requiring unanimous agreement.

The role of the European Council

Others point to the role of the European Council. They argue that this body, charged by the treaty with "determining the general political directions and priorities" of the Union, now plays a dominant role. Comprising, as it does, the leading political figures of each Member State, its *modus operandi* is of an intergovernmental character, particularly as its decisions normally require consensus.

Yet, this view must be nuanced.

First, because its ability to dominate the whole system is limited. Its members meet only periodically and briefly, and must find consensus to take decisions. It is challenged, even more than the other institutions, by enlargement: it is no longer the fireside chat envisaged by Giscard d'Estaing, but a massively larger and therefore more formal event. Change was necessary for it to even continue to function at all, let alone to improve its capacity to act.

Second, because it is not an intergovernmental "summit" in the manner of the G8 or the G20, where Representatives of sovereign States sit around the table with their national flag in front of them. Rather, it is an EU institution, operating within the framework of the treaties with its checks and balances, and comprising not only heads of State or Government but also the President of the Commission and, now, its own President.

Third, because this new President does not simultaneously represent a Member State, but must act in the European interest. On paper, he has no greater powers than any previous incumbent (under the previous system of rotation among the Prime Ministers/Presidents). But the three small changes – of being full-time, longer-term and being elected by his fellow members – cumulatively make a big difference. He stands a better chance than Presidents under the previous system, of securing the necessary consensus around the (now somewhat larger) table.

Fourth, the perception of a shift of powers to the European Council is simply because, in recent months, the EU's main preoccupation has been about macro-economic governance. This is inevitably a matter of coordinating national policies, given that 98% of public spending in the European Union is national or sub-national, while only 2% is carried out through the European budget. And of course, as the Union budget must, by law, be in balance, so 100% of deficits and debts are national rather than European. It is therefore natural that the European Council plays a significant role.

Yet, as it has sought to get to grips with this, it has inevitably had to adopt reforms and procedures that strengthen the supranational features of the Union. The changes to what is now called "economic governance" (itself a step forward in perceptions), which resulted from a Task Force set up by the European Council and chaired by its President Herman Van Rompuy, will widen the degree of common economic policy-making (to cover not just deficits and debt, but also macroeconomic imbalances), toughen up some of the common rules (notably of the Stability and Growth Pact) and strengthen the role of the Commission (whose proposals in some cases will now stand adopted, unless there is a qualified majority against them in Council – "Reverse QMV").

The example of the European Stability Mechanism

A good example of how even something with a purely intergovernmental appearance can be more communautaire than expected, is the European Stability Mechanism (ESM). Its basic structure is intergovernmental because it is the Member States that are providing its capital (the EU budget being too small to guarantee such large sums). As shareholders, they constitute the Board. Yet, it is to the Commission that the ESM has to turn for assessments of the need for financial support, the definition of the conditionality for loans and negotiation of a macro-economic adjustment programme with the Member State concerned. Any programme will require a Council decision based on a Commission proposal. When the programme has been adopted by the Council, the Commission will sign the Memorandum of Understanding on behalf of the euro area Member States and it is the Commission which will be responsible for monitoring compliance with the policy conditionality required. In the eventuality of certain disputes arising, it is the EU Court that will be responsible.

So, even an intergovernmental framework ends up, in practice, needing to rely on more communautaire methods. True, some of its central features, such as the need for unanimity, remain – but we should not forget that this is an area where an intergovernmental step is replacing a void, not replacing a previously communautaire instrument. Politically, the initial choice was not between the communautaire method or an intergovernmental one, but between an intergovernmental one and nothing at all. And in practice, it evolves.

Overall, one can conclude that the basic dynamic of European integration continues to apply. Interdependence requires common solutions to common problems. This in turn requires institutions and procedures to deal with them. When such procedures and institutions cannot deliver because they have not been given the capacity to do so, pressure of events will force reform. This has almost always gone in a communautaire direction. It has often been slow and cumbersome, with hiccups which can occasionally be dangerous. It is punctuated by rows and disagreements. It is dangerously vulnerable to the most reticent Member State with an inbuilt bias to the lowest common denominator at any given moment. But for more than half a century, this dynamic has nonetheless prevailed.