

# **GOVERNANCE AND GOVERNMENT IN THE EUROPEAN UNION. The Open Method of Coordination. (\*)**

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## **1. The globalised world, new regionalism and the EU between convergence and divergence**

Despite growing interdependence and enhanced pressures towards a common pattern, it is not entirely possible to eliminate socio-economic divergence and capitalist diversity within the EU. Not only do they have deep historic, cultural, social and economic roots, but, more importantly, it has become clear for international literature that even though the globalisation and integration process pushes for a greater convergence, it goes paradoxically together with a deepening of “localisation”, that is deepening of regional and national differences<sup>1</sup>. James Rosenau has rightly proposed the concept or neologism of “framigration” to grasp this mixture of integration and fragmentation at the level of the global system<sup>2</sup>. This new reality is bound to have consequences on the elaboration of international governance norms and on their chances of being consistently implemented. The international coordination of policies, especially at the Trilateral Commission level, was a tentative response at the end of the long period of the US-centred hegemonic stability, which emerged after the Second World War during the decades of embedded capitalism. Its success, mitigated during the 1980s, proved to be increasingly insignificant over the last decade of the century; this implies a risk of exacerbating discord globalisation, economic but also social competition among national and sub-national systems (in the sense of a rush to the bottom<sup>3</sup>) and instability, both on the global level and within national societies.

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This chapter places the systemic development of neo-regionalism, and more specifically of the EU, in the framework of the growing gap between the supply and demand of good international governance. National, world and regional organisations and institutions will influence international modes of competition in the market share, the social cohesion and the political stability in the world. The EU is paradoxically perceived as both a deregulating and a “reregulating” actor (as shown by the Danish referendum in September and the demonstrations in December 2000 in Nice, for example).

In certain conditions, neo-regionalism can become a particularly adequate, efficient and legitimate level of governance of modernisation, within the framework of a multilevel international governance and as a support to national and sub-national governance.

As far as its contribution to world governance is concerned, neo-regionalism has become a structural factor of the post-Cold War globalised international system; it can contribute to filling the good governance deficit through a reduction of the asymmetry of the post-Cold War system and also through the resolution of the problems caused by the fragmentation and excessive number of actors. Despite the heterogeneity of regional organisations and arrangements in the current global system (ranging from soft to deep integration), in general regional organisations already go beyond the simple economic and commercial dimension and constitute a kind of third level between the global level, increasingly perceived as powerless and lacking legitimacy, and the State level, affected by the loss of external and internal sovereignty.

The EU is the key region in the perspective of a more symmetric and less fragmented global governance: although unique in terms of its institutional features and of its history, as a laboratory, it is one of the main references for the course of the other regional organisations (Mercosur, Asean, Sadc, Ecowas, Comunidad Andina, etc.), and is a source of emulation. More importantly, it acts consciously as a proactive factor of the regionalisation of the world through its external policies: common commercial policy, cooperation policy, inter-regional agreements, including the political dialogue. Of course, the European model is specific, not exportable. But it can play a crucial catalyst role in one aspect: its message must be clear, both at the level of content and mode of governance of the internal diversities. It must in some way be translatable into the experience of other regions of the world, concerning their methods and institutional forms of integration.

The “Lisbon Strategy” has been innovative at these two levels<sup>4</sup>: as far as content is concerned, it has put a model for a knowledge-based society and for socio-economic regional modernisation for the long term on the agenda of European States; this constitutes the soul of neo-regionalism, without which globalisation will turn into the assertion of a unilateral globalism, in the sense of a unipolar and asymmetric strategy which will only worsen conflicts and weaken global governance. As far as regional institutions are concerned, the “Lisbon Strategy” has opened up a new track, which is likely to produce increased socio-economic integration, while at the same time is more easily translatable into the language of the other regional organisations because it is more capable of conciliating further integration showing respect for national diversities. This chapter will deal more particularly with this aspect, the new methods for the reorganisation of governance and internal government of the EU, with a view to strengthening convergence at regional supranational level.

With regard to internal institutional development, in Western Europe, convergence has been considered a common goal since the start of European construction, in spite of national differences (see Preamble to the Treaty of Rome). The multiple successes of the European construction, its deepening and its successive enlargements (from six founding States to the current fifteen and the twenty-seven predicted at the end of the enlargement process launched in Helsinki in 1999) seem to confirm this route. Three values were at the basis of convergence during the first decades of European construction: peace between former enemies and

stability; national and supranational democratisation; social and economic prosperity. Henceforth secured in Western Europe, since 1989, the first two have largely been considered important mobilising factors at the level of the continent, coming as a justification for Eastern enlargement, despite its risks and implications. More specifically, for the first time in European history, peace and democracy are at the core of a rational and credible continental project. The real problem is that the conditions for a positive trade-off between enlargement and deepening are, on the one hand, the success of the institutional reform, launched in Maastricht and Amsterdam, which went through so many difficulties during the Nice IGC, and, on the other hand, the successful modernisation of the European socio-economic model. Thus the role of the EU both as a global actor and as a continental driving force depends on its capacity to successfully modernise the economic and social model. And therein lies the problem: it is highly controversial among the fifteen European States and public opinion varies as to whether economic and social prosperity, that is conciliation between economy and society, between global competitiveness and social justice, should justify an increased European integration, particularly if traditionally conceived as a new stage in the process of European integration<sup>5</sup>, towards “an even closer Union among the peoples of Europe”<sup>6</sup>. There is no unanimity, either at the national level of public opinion, the elite, or of the scientific community in terms of the kind of dynamic rebalancing to be pursued between the different levels of European, national and sub-national governance.

## **2. The search for new methods of European integration**

The “Lisbon Strategy” is taking up two major challenges: to identify the new undertakings that have to be launched in order for Europe to recover from its delay in the construction of a knowledge-based society and, above all, to establish how to launch, manage and apply the innovation programme. The question at the core of these challenges is how to organise the governance of economic and social modernisation of the European region. The Lisbon European Council, whilst recognising that national and regional differences are of value and that it is not possible to forget them, has Stated that the current drift towards “competition States”<sup>7</sup> has the negative effect of increasing intra-European tensions, generating defensive and/or fragmented approaches to globalisation, thus favouring the socio-economic decline of Europe as a whole within the globalised world. The “How?” thus becomes the key challenge. It is precisely at the level of governance and reorganisation of the balances of power between the four European institutions (Council, European Council, Parliament and Commission) that the EU has achieved limited results, despite the scope and quality of the projects relating to similar objectives, namely the harmonisation projects of the 1970s and 1980s (the Social Action Programme of 1972) and, more recently, the famous White Book of the Delors Commission of 1993<sup>8</sup>.

The starting point should therefore be the difficulty for the EU to be proactive in these areas, crucial to its future, a difficulty which recently almost led to the blocking of the political initiative. Traditionally, the strategies aimed at reducing the differences between the Member-States have called upon two main methods: intergovernmental cooperation and community integration.

As far as the first method is concerned, several scientific works have confirmed the crucial importance of national mobilisation of interest in favour of Europe and the weight of national preferences for Europe expressed by governments, in short, the European choices of States<sup>9</sup>. However, intergovernmental cooperation as such has proven to be dramatically inadequate during the last decade, and not only with regard to the two political pillars of the TEU (II and III).

Secondly, the federal-functionalist method has delivered extraordinary results for fifty years, paving the way to monetary Union and to the creation of a *sui generis* political entity: the EC/EU. Nonetheless, the international scientific literature largely agrees on the fact that there has been a turning point since the end of the 1980s, following internal and external factors directly affecting the federal-functionalist method: the politicisation of the issues of integration at the heart of the majority of Member States and the emergence of acute problems of legitimation, not only towards new transfers of national competencies to the EU, but also towards the already existing “normative supranationality”<sup>10</sup>. Moreover, the new international framework, that is the globalised world and the collapse of the communist regimes in Eastern Europe, have forced the EU to deal simultaneously with two contradictory challenges. On the one hand, increased internal diversity: global competition and the Eastern and Mediterranean enlargement led to growing differentiation, complexity and internal heterogeneity. On the other hand, the need to restructure its governance system and to strengthen the central government. Growing world political responsibilities and the negative effects of purely national competitiveness raise, once again, the question of unity and convergence. To sum up, while both diversity and the need for convergence grow, the traditional integration method does not meet the internal consensus required to enable new delegations of national competencies from the States to the EU.

This historic turning point is basis of the eager search for new methods, which has characterised the EU, especially since the Treaty of Maastricht. The Treaty of EU and the difficulties in its ratification are a sign both of the scope of the turning point underway and of the difficulty of this quest for a new European model. The “opting-outs” are a huge change in Community law, since, for the first time, internal differentiation (ex: EMU) is based on non-will (with no time limits) of a State to take part in a common policy and not on its impossibility (transitory, and anyway, based on objective reasons), in accordance with the traditional model of a “two-tier Europe” presented in the famous Tindemans Report of 1976. The multiplication of exceptions, derogations and extra-Treaty agreements and protocols (Schengen Treaty and Maastricht Social Protocol, for instance) have been a consequence of this institutional difficulty. The highly controversial debate on “enhanced cooperation” is also to be situated in the framework of the feverish search for new methods, through and not beyond the Treaties of Maastricht and Amsterdam: provisional differentiation within the shared process towards the Union, or flexible integration, meaning potentially permanent differentiations and therefore open recognition of the heterogeneity of the final goals? This still remains an open question in spite of the steps accomplished by the Nice Treaty. Anyway, the chances of enhanced cooperation being applied to the first pillar are very slim, and impossible for policies in areas affecting the internal market or competition. To sum up, the deadlock of the old methods is the basis of the search for a multiplicity of new tracks. The answer launched by the Lisbon European Council of March 2000 is set in this context: it is relevant with regard to multiple and crucial areas of economic and social modernisation.

The Treaty of Maastricht had a “new beginning” character. However, it is characterised by a double internal asymmetry with regard to the method and means of integration, particularly important because the areas at stake are very close to the modernisation of the European socioeconomic model :

- a) first asymmetry : within economic and monetary union, the imbalance between the federal and centralised character of monetary union and the decentralised character of economic union (Article 99 TEC);
- b) second asymmetry : between EMU, on the one hand, and the social union, on the other.

Some comments have presented the opting-outs and the above - mentioned asymmetries as temporary, by citing the example of the Social Protocol, integrated into the Amsterdam

Treaty. Nevertheless, one decade after Maastricht, these two asymmetries cannot seriously be considered as a transitory stage leading necessarily to the extension to the economic, social and political areas of the procedures applied to monetary Union. It should be borne in mind that EU has not progressed in that direction and that the teleological expectations have been completely disappointed.

What is even more interesting is that integration has nonetheless made progress, the Single European Act and Monetary Union have called upon the dynamics of integration and cooperation, but following new tracks and directions. The EU would not have progressed at all if it had stuck to the two classic methods. For example, the asymmetry between EMU and social union was corrected – even if only very partially – by the Treaty of Amsterdam, with the inclusion of the Social Protocol in the body of the Treaty and the new Employment Title. However, it should be stressed that this was only possible thanks to a new method. Moreover, with regard to the Social Chapter of the TEC (Title XI), there is the method of social dialogue between the main social actors prior to the European regulation. This is the agreement between the social partners that creates the conditions for the elaboration and approval of a directive (in the same way as is done at the national level in Scandinavia and Germany, in accordance with the model which Ph.C. Schmitter calls “social neo-corporatism”). Secondly, new voluntarist methods of soft social governance have been put into practice<sup>11</sup>, even though they were not expressly provided for in the Treaties: for example, what W. Streeck calls “governance by persuasion” (through resorting to expertise) or “governance by consultation” (European Parliament, social dialogue) or even “governance by diffusion of best practices”<sup>12</sup>. Thirdly, concerning the new Employment Title of the Treaty of Amsterdam, a new and very promising method was introduced in the Treaty : multilateral surveillance (articles 125-130 TEC) which paved the way to the Luxembourg European Council and the “Lisbon Strategy”.

This leads us to the central hypothesis of this chapter: the opening up to new methodologies in European socioeconomic regulation is inevitable if the EU wants to progress further in the process of convergence without instigating the above-mentioned internal oppositions and external difficulties. In particular, the “Lisbon Strategy” could not proceed without the development of new methods and new tracks because it deals with topics for which, in general, there is no EU competence. These are, paradoxically, the most important and delicate topics in national agendas, while it is not at all likely that the national and sub-national authorities or the socioeconomic actors are willing to strengthen a system of community rules at the European level on these matters.

### **3. The new methods in the framework of the European multilevel governance**

The “Lisbon Strategy” must be analysed within the framework of the vision of globalisation which is its prerequisite. Reading of the documents from the Presidency confirms that two very simplistic opposing visions were denied : firstly, the vision according to which global competitiveness is nothing more than a positive opportunity for growth and development. Secondly, the vision of globalisation as nothing else than a menace, a destructive force which strikes at the capability of the States and the EU to redistribute wealth and revenue. These two general visions present implications for the concept of European governance.

In the first vision, the only task of the Governments would be to adjust by accelerating liberalisation. The EU should confine itself to the regulation of deregulation, what F.W. Scharpf, following Timbergen, has called “negative integration”<sup>13</sup>. In the second vision, the priority granted to the defence of the existing social model translates itself into inward looking policies of protection of sectors which are economically and socially fragile. These

two cultures are well represented within the European societies as well as within the European Council. The Lisbon European Council, by launching a long-term strategy for the construction of the “most advanced knowledge-based society in the world”, established that the globalisation process is not in itself destructive or beneficial. The consequences of the necessary opening to world competition will depend to a large extent on Europe’s capacity to organise an adequate common political management of the modernisation process. It is through their strategic preferences, the mobilised resources, the coherent application of the policies adopted, that Europeans will succeed in taking advantage of globalisation. This all comes down to an original combination of negative and positive integration, which calls for reorganisation of the modes of European construction. The question is not simply whether national systems of regulation can survive within the new framework of global competition, but what changes to the whole European system of governance, including the European State and other levels of authority, could better enable conception and application of an adequate strategic response. The expression “governance” is used in this article in the sense given to it by J. Rosenau; the concept of governance is more comprehensive and encompassing than the concept of government. It includes both the formal and institutionalised procedures and the informal and non-institutionalised ones<sup>14</sup>. The concept of governance enables us to refer to more actors and levels of organisation of authority than central governments and their negotiations<sup>15</sup>.

Nevertheless, our concept of governance is evidently not limited to the non-State private dimension of authority (for instance contracts and partnerships, in which public authorities are solely perceived as “enforcement to bargain”<sup>16</sup>), but takes directly into account the formal dimensions of the power of regulation of the State and of the sub-national levels in the framework of the “organisation of collective action”<sup>17</sup>, in the sense of “provision of collective goods”<sup>18</sup> as well as the institutional and intergovernmental bodies of the EU.

These two dimensions of the system of European governance are tied together in the framework of the system of European “multilevel governance”. The scientific literature which shares this interpretation of European governance stresses in particular the following features: multiplication of levels and actors taking part in the decision-making process and in the implementation of the decisions; interaction between the sub-national, national, supranational and transnational levels of authority; continuous negotiation between interests at several levels, including public and private actors; the centrifugal, complex and overlapping character of the system and the absence of hierarchy in the organisation of authority<sup>19</sup>. To sum up, on the one hand, we have very intensive interaction between the European level and the national and sub-national levels, a true institutional inter-linking both in the sense of Europeanisation of national structures (top down) and of the impact of national and infranational dimensions on the EU (bottom up). On the other hand, the idyllic images of the multilevel governance are questioned : there is the absence of a true political community, or of a “community of destiny”, which makes this configuration, this polity, something “intrinsically contingent”<sup>20</sup>, still in transition towards its definite form. However unthinkable it may be to turn this multilevel governance into a European supranational State, it is not ruled out that internal pressures, external challenges and the will of actors may converge towards increased and new forms of solidarity and integration.

How does the “Lisbon Strategy” fit into the existing framework of European multilevel governance? The aim is to contrast the fragmented side of the European multilevel governance, according to a more coherent strategy and along three main Guidelines.

Firstly, the strategic authority at the central level of the EU needs to be reinforced and the political leadership of the Union in this field to be restored. This leadership has to be strong enough to conciliate consensus between the fifteen, the Commission and the European Parliament around a long-term strategy (planned for a decade). The European Council

(according to art.4 TEU), in collaboration with the Council and the Commission, potentially represents this central authority.

Secondly, the reinforcement of the economic government of the Union was and is at stake, more particularly through the reduction in the above-mentioned asymmetry, between the monetary and the economic union: this is only possible through strengthening the Broad Economic Policy Guidelines (BEPG) provided by the art. 99 TEC.

Thirdly, a method of governance had to be created which would include the Commission as well as the Member States, and a multiplicity of institutional, social and economic actors. Only a new method, with a process which is both decentralised and centripetal, would make it possible to move forward in the process of convergence between European societies, despite the open opposition of eurosceptical public opinions and of governments to new transfers of competencies<sup>21</sup>.

#### **4. The legal basis of new methods and the main features of the “open method of coordination” (OMC)**

The “new open method of coordination” (OMC) is at the heart of the “Lisbon Strategy” and its follow-up<sup>22</sup>. Despite the variations between policy fields, this method has four components:

1. the establishment by the Council of common European Guidelines;
2. a reciprocal learning process, which includes benchmarking, peer review, diffusion of the best practices and common indicators;
3. given the quoted Guidelines and the learning process, national plans are drawn up by each government;
4. on a regular basis, the Council carries out an evaluation of the results which can lead to recommendations.

The Commission feeds the whole process with its contributions, both in the top down and in the bottom up dimensions of the strategy.

The precedents of the OMC are very diverse: first, the multilateral surveillance of the national economic policies, provided for in 1992 by the Treaty of Maastricht (art. 99 TEC) in relation to the BEPG. Secondly, the approach launched by the Essen European Council (in 1994) in the field of employment, subsequently taken up by the Treaty of Amsterdam (1997, Employment Chapter, Title VII, art.125-130 TEC) and precised by the Luxembourg European Council (1997), hence the name of “Luxembourg process” given to the European Employment Strategy.

Indeed, the innovation of Lisbon is the result of the maturing process over several years. Even if the multilateral surveillance has evolved in its forms, there is a logic and an institutional spill-over effect in this development, including variations depending on the issues to which it is applied. The proposals to apply the same methods used in Monetary Unions to the social and employment policies have been rejected many times by the European Council. The progress achieved by the Amsterdam Treaty employment chapter has to a certain extent pointed out a possible new direction for social governance. Article 128 again takes up art. 99 TEC on the BEPG, but it is softer and much less binding. Given that the express goal of art. 99 is “sustained convergence of the economic performances”, the Council monitors the consistency of national economic policies with the BEPG and “regularly carries out an overall assessment”, “on the basis of reports submitted by the Commission”. Its second specificity is the mechanism foreseen where it is established that “the economic policies of a Member State are not consistent with” the BEPG, and in particular, where “they risk jeopardising the proper functioning of EMU”<sup>23</sup>. In that case, the process is gradually heading for procedures closer to

the binding and centralised mechanism inherent to Monetary Union. The Council can “make the necessary recommendations”, acting by qualified majority on a recommendation from the Commission. Following the same procedure, the Council can also “decide to make its recommendations public”. Art. 99 confers the responsibility of reporting to the EP on the President of the Council and on the Commission, in particular in case recommendations are made public. Art. 104 C TEC foresees a possibility of “escalation”, ranging from the recommendation, to the public recommendation, “measures” and also real sanctions (§ 11) applied to the Member State responsible for an “excessive deficit”. The “Stability Pact”, approved by the Amsterdam European Council (1997), following the request of the German Minister Waigel, has reinforced the binding character of the control of these budgetary policies.

However, in the Employment Chapter of the Treaty of Amsterdam, the mentioned mechanism of Maastricht providing for multilateral surveillance (art. 99) was inclined in the opposite direction, that of increased respect for national diversity. The “Guidelines” adopted by the Council acting by qualified majority have a similar position as the BEPG of art. 99 (which they refer to explicitly), but they are based on the annual conclusions of the European Council. In comparison to art. 99, in general art. 128 confers greater importance on the Member States with regard to the annual reports on the implementation of the national employment policies (the ones which will become, in practice, the National Employment Plans). Another difference is that, whereas the European Council does not intervene in the control of the follow-up of the BEPG, left to the Council, the European Council receives the annual report from the Council and the Commission with regard to employment policies (examined yearly by the Council which, acting on a proposal from the Commission, can address recommendations to the Member States). Art. 128 refers to the consultation of the EP, the Economic and Social Committee, the Committee of the Regions and the Employment Committee. Finally, art. 129 makes reference to “best practices”, comparative analysis, innovative approaches, evaluating experiences and pilot projects.

The Social Chapter is far more complex since the social objectives Stated in art. 136 are placed in a framework conditioned, on the one hand, by the “diverse form of national practices” and, on the other hand, by the “need to maintain the competitiveness of the Community economy”. The possibility of having directives and qualified majority voting in the Council is foreseen in certain fields (gender equality, protection of workers’ health, working conditions, information and consultation of workers), but with regard to the major dossiers of social protection (social security, etc.) the methods envisaged are cooperation and coordination: according to art. 137, the Council “may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences in order to combat social exclusion”. However, according to art. 140, “with a view to achieving the objectives of art. 136, the Commission shall encourage cooperation between the Member States and facilitate coordination of their action in all social policy fields under this chapter, particularly in matters relating to: employment, labour law and working conditions, social security, prevention of occupational accidents and diseases, occupational hygiene, the right of association and collective bargaining between employers and workers”. The ways by which the Commission “facilitates coordination” between the Member States are specified: giving opinions, arranging studies and consultations. Finally, as anticipated, articles 138-139 specify the forms of “social dialogue”, including the possibility of applying the very innovative procedure of “contractual relations, including agreements”, giving way to “a Council decision on a proposal from the Commission” (art. 139, § 2), should the partners so desire.

Thus, we are in the presence of a large multiplicity of quite varied regulation methods. Nonetheless, the common features are not negligible:

- the concept of “coordination” as a method to achieve the EU’s strategic objectives is used in art. 99 (BEPG), art. 125 (employment) and in art. 140 (social policy). However, it is not used in art. 104 and it is interlinked with the concept of “cooperation” in the articles relating to social policy.
- the important role assigned to the Commission seems to go together with resorting to the concept of “coordination” rather than “cooperation”, a softer concept which is clearly more intergovernmental. The Commission plays multiple roles:
  - a) expertise and consultancy, but also more important roles;
  - b) preparation and periodical examination of national policies by means of reports (concerning art. 128, the report is a joint report by the Council and the Commission);
  - c) proposal of recommendations made to the Council and, when necessary, to the Member States.
- the role of the Council, acting by qualified majority, both on the project and the recommendations (while acting by unanimity in the more sensitive fields of social security).
- the development of a Community culture of evaluation, exchange of best practices and so on is referred to both in the employment chapter and in the social one, within the framework of a kind of reciprocal and mutual learning process between the Member States and encouraged by the Commission.

Even though the “Lisbon Strategy” does not have a specific legal background covering all the fields concerned, it can benefit from a considerable legal *acquis* which justifies the step forward proposed by the Special European Council of March 2000. The Lisbon European Council has redrawn this complex legal background, enriched by the practical experience of the European Employment Strategy (Luxembourg process) and has formulated the new open method of coordination (OMC) putting it at the heart of the project of technological, economic and social modernisation for the next decade<sup>24</sup>. The new method was thus made precise and applied (with adaptations as for its intensity) to other fundamental policy fields, traditionally under the competence of national and sub-national authorities: education, structural reform and internal market, technological innovation and knowledge-based society, research, and social protection<sup>25</sup>.

We have already explained the meaning of the expression “coordination” in the policy fields, which are, on the one hand, strongly affected by national diversities and, on the other hand, so important for the success of the EU’s strategic common action, as the cooperation method alone could not produce the expected results.

Concerning the expression “open”, it implies several meanings, depending on the accents and interpretations:

- a) open in the sense of respect for the personalities, competencies and practices of the Member States. The majority of the Member States call for a soft methodology because they are convinced that the great majority of the policy fields approached by the “Lisbon Strategy” must remain essentially under the competence of national authorities and be submitted to unanimity in the Council. Hence, it is logical that the States be given guarantees when they are asked to accept the perspective of an increased convergence in these fields under their competence. The key argument: that benchmarking and the whole strategy respect the difference between (common) indicators and targets (different from one Member State to another) is essential. Second, that the process of gradual approximation to the indicators be taken into account and not the absolute result<sup>26</sup>. The

OMC does not foresee public recommendations to the Member State whose policies are not consistent with the European Guidelines, in contrast with art. 99, § 4;

- b) open, in the sense of the participation of a variety of actors of the civil society: national, sub-national, transnational, supranational;
- c) open also, according to more integrationist points of view, because it might act as a *passerelle* towards other integration methods, in particular towards the Community method or social dialogue when deemed necessary. Following the same logic, this method could create the conditions to demand a subsidiary Community action, aiming to complete the action of the Member States. Legal supports and precedents are not completely missing. Among others: “minimum requirements” provided for in art. 137, § 2; “incentive measures” in the field of education, art. 149, §4; art. 125, according to which “the Community shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting, and, if necessary, complementing their action”. It would therefore be legally possible to fully respect the competencies of Member States and at the same time go beyond cooperation, towards coordination and, if necessary, Community action. This last argument is, of course, very delicate because the OMC would clearly become not only a way to convergence, but also to deepening and integration.

The feasibility of search for new methods of European regulation, intermediate ways between the Community and intergovernmental methods, is at stake here. As in the case of the European Employment Strategy and the Luxembourg process, among others, the EU is faced with an experimental method of social regulation, besides the European social dialogue art. 138-139 and the legislative way (translated into directives)<sup>27</sup>. A legitimate question that arises at the time of extending the new methods to other important fields is that of knowing if they are alternatives to the traditional methods or rather complementary methods. The answer remains open at this stage:

- on the one hand, the new methods are developed as complementary, acting where the Community method cannot be applied and the traditional intergovernmental method is not enough to achieve the convergence desired. It is therefore erroneous to interpret the OMC as a return of intergovernmentalism to the detriment of the Community method, since the method concerns policy areas which are not the exclusive competence of the EU. Moreover, we have emphasised the progressive interpretation of the expression “open”, and also the possible *passerelles* of the OMC to the Community method, if needed and when legally possible. The new method is not to be applied at the cost of European social dialogue either: on the contrary, the social partners have a role to play at each policy level (for instance the SEE) and at the global level (the annual *fora* of social partners launched in the year 2000 and continued in 2001). However, since the strategy has a global character (technological, economic and social modernisation), the EU cannot count exclusively on the methods provided for in the social chapter, the one applied to the BEPG, or the one of the European Employment Strategy.

To conclude: indeed, the open methods of coordination has a specific character different from that of the directive, from the social dialogue or from other ways of regulation. However, it completes them in those cases where they are not applicable.

- on the other hand, the importance that the OMC and the new methods are gaining can have institutional spillover effects unfavourable to traditional methods. The EU could waive directives, even if they are possible from a legal point of view; or the OMC success could make the way for some issues from unanimity to qualified majority voting in the Council harder to achieve. However, such a development, if it were effectively to take

place, would suggest that we are in the presence of a new integration regime in the making.

Apart from the words coordination and open, the expression “global” should also be added to qualify the open method of coordination. Indeed, we should emphasise the importance of the express possibility of an extremely large application of the new methods to practically all the fields tackled by the “Lisbon Strategy”. These could be qualified as fields of “common concern” (following the formulations of art. 126 and art. 99). It is precisely this “global” character of the “Lisbon Strategy” that, to a certain extent, justifies the reference to the European Council, as the political body that can ensure coherence and harmony between the different policies and between specialised Councils. The European Council, of course in collaboration with the Commissions, plays a different role in the various policies: the European Council acts as a political guide in the case of the BEPG (submitted to the Conclusions of the European Council; see art. 99), an even more important role in the Employment Strategy, although marginal in the Social Chapter: as synthesis body and political leader, its role is crucial in the original government mode foreseen by the “Lisbon Strategy”.

## **5. Governance without government? The issue of strategic leadership in the integration process**

The new methods of governance imply a new model of government. The majority of international scientific publications have come to the conclusion that the EC and the EU are unique cases of political systems, radically innovative in comparison to the classical institutional form of the nation State. The logical implication of this is that the government of the EU –the same remark applies to its representation, democratic control, citizenship, and so on- cannot be analogous to the State models, or even to the federal States<sup>28</sup>. The integration dynamics has increasingly stressed this *sui generis* feature of the European political system. This original character does not lie only in supranationality, but in the original combination of supranational, intergovernmental and mixed procedures and institutions. The “constitutional” run-ups towards supranationality have regularly been accompanied by greater complexity and also by development of intergovernmental procedures. The main question in this contribution is to identify the forms the European government in gestation is taking, in other words, what kind of rebalancing the “Lisbon Strategy” implies in this new power game between the different levels of authority and government in the Union.

The institutional innovation underway in the government of the Union is a double one:

- firstly, the global character of the OMC can only strengthen the centripetal demand for coherent coordination, capable of counter-balancing the articulation and decentralisation of governance practices arising from the “Lisbon Strategy”. To a certain extent, the European Council, in close collaboration with the Commission, also applies the OMC, not only through the establishment of synthesis indicators at the central level, but also through the institution of the Spring European Council, which shall take place once a year and which will be responsible for monitoring the State of progress of the strategy. On this basis, the European Council establishes an increased interaction (bottom up and top down) with the Commission, the social partners, the specialised Councils, the Committees, the EP, the ECB, and so on. To sum up, the innovative idea of “periodic monitoring, evaluation and peer review” is the key of the central and decentralised government of the “Lisbon Strategy”, which distances it from the wishful thinking. Indeed, to wager everything on decentralised governance alone, without

improving the organisation of the central and formal government of the strategy would be totally inefficient. The approach is decentralised, but the Commission, the Council and the European Council will ensure the coordination and control of the follow-up.

- secondly, the European Council, as the super network of prime ministers<sup>29</sup>, takes up again its strategic role of guidance by situating it in the framework of the essential goals of economic and social modernisation. The question of political leadership is open in the EU since the loss of strength of the classical federal/functionalist model of integration and because of the decline of the Franco-German engine. Several hypotheses have arisen both from the scientific debate and from political practices. The bet placed on the "Lisbon Strategy" is clear and many misunderstandings have gradually dispersed. The challenge to be able to catch-up with the US and Japan in areas concerning the knowledge society, as well as to reconcile the economic and social logics in new forms of economic competitiveness and social justice needed a political and strategic choice at the highest level of power. The most realistic balance between possible greater convergence and respect for national and regional specificities, the needs of the various States and sectors, could not seriously be conceived without an innovative attempt to reorganise the government of the Union: only the synergies between the European Council, the specialised Councils and the Commission can promote and strengthen the role of central political leadership and enable an inner redistribution of tasks.

The Lisbon and Feira Conclusions have insisted on the enhancement of "the synergies within the central government" (European Council, Council and Commission) as a prerequisite for success. Paragraph 36 of the Lisbon Conclusions shows clear awareness of the difficulty of implementing the strategy in a coherent way: "we should consequently be organised both upstream and downstream from that meeting" (the Spring European Council). Of course, only the practical experience of the activities of the Commission and the successive Presidencies, from one Spring Special European Council to another can reveal if the hypotheses launched in the Conclusions are actually becoming reality.

The Commission, called to play an essential role, is the main ally of the European Council in the strengthening of the central government. The Commission is expected to take on multiple functions: it presents the priorities which will be at the heart of the European Guidelines to each Council and to the European Council in collaboration with the Council; it monitors the implementation and follow up. Moreover, already since Maastricht, the Commission is responsible for presenting to the Council the report at the basis of the BEPG, an essential element included in the new global strategy. Finally, since Amsterdam and Luxembourg (1997), the Commission draws the recommendations relating to the European Employment Strategy. The ECOFIN Council confirms its primacy as far as the BEPG are concerned, but the other Council formations are also called upon to contribute in an active way. In short, without a close collaboration between the Council, the European Council and a strengthened Commission, the "Lisbon Strategy" could certainly not move forward. Only the Commission possesses the technical and organisational means to ensure the continuity of the programme approved, and also coherence between Presidencies, which has proved to be a very delicate task, especially in recent years. It is nevertheless called upon to provide an enhanced internal coordination between its Directorates General and a "political refocusing"<sup>30</sup> on the essential points of the strategy.

The Council is submitted to changes in its way of functioning. The General Affairs Council (GAC) could perhaps have aspired to an increased political role. But it is increasingly overburdened by the new tasks of the EU, as far as foreign and security policy is concerned, and cannot effectively take on that function. The reform of the GAC, wanted by many experts (breaking the GAC into two Councils: CFSP Council and Council for the coordination of European policies, consisting of deputy prime ministers) is not moving forward and would need fifteen convergent, analogous and simultaneous reform laws: in short, the harmonisation

of the structures of the fifteen national governments, which does not seem easy to accomplish. Nowadays, on the one hand, the increasing weight of the stakes arising from the common foreign and security policy, and on the other, the heavy work to coordinate incongruous policies prevent the GAC taking up this strategic role<sup>31</sup>. Without a reform of the Council, the practical relationship between the European Council, the specialised Councils and the COREPER encounters serious difficulties. The “Lisbon Strategy” has opened the way to a possible development, which implies new relations of the European Council with the two most important specialised formations of the Council: the General Affairs Council (GAC), traditionally the most important one, and the ECOFIN which has gradually come first, since Maastricht, between 1992 and 2000<sup>32</sup>.

The valorisation of the European Council is worthy of comment. The double nature of the European Council, both of coordination and of general political and strategic guidance of the Union, is included in the Treaties: the European Council is a double body: on the one hand, it is the Council formation meeting at the highest level, that of Heads of State and Government; on the other, it is the body which covers the whole institutional system of the EU and the EC. This second aspect has been particularly important since the beginning according to a historical quotation, paradoxically coming from the inventor of the European Commission, J. Monnet, at the founding of the European Council in 1974: “the Heads of State and Government have decided to constitute themselves into a European provisional government<sup>33</sup>”. Thus, in Lisbon, the European Council relaunched the primacy of the political body *per se*. The objectives set largely justified such an approach: they have a political nature and are essential to a civilian power such as the EU (contrary to the US, a politico-military power), which implies that the success of the modernisation of the social and economic model is a grand design, aiming at Europe’s technological, economic and social catch-up vis-à-vis the US, but also, and logically, the core of the development of its internal and international identity.

For some time now, the European Council has been working for a reinforcement not only of its role as supreme body of the Council but also of its strategic leadership. The Helsinki European Council had already established that the BEPG should be under the coordination of the ECOFIN Council, but also “under the political guidance of the European Council “ (Helsinki Conclusions, December 1999). This implies restructuring the hierarchical relationship between the European Council, on the one hand, and the specialised formations of the Council, on the other, in particular the two which traditionally came first. Nevertheless, two questions arise. Firstly, would this institutional shift be worth a revision of art. 4 TEU<sup>34</sup>? Secondly, a theoretical question, what is the relevance of the primacy of politics at the start of the twenty-first century?

The Presidency Conclusions from Lisbon assign a double function to the European Council in order to be coherent on this double nature: the European Council launches the strategy for socio-economic modernisation and therefore mandates the specialised Councils and the Commission. Secondly, once a year, at its Spring meeting, the European Council is committed to coordinating the work of the Council and of the Commission, to monitoring it, to ensuring the follow-up and, if necessary, to relaunching the project<sup>35</sup>.

To sum up, the new link to establish between governance and government corresponds to a new model of organisation of the European powers: a reinforcement of the governmental function following a model of dynamic and oriented subsidiarity. The governance is decentralised, but the European Council, the Council and the Commission should constitute, each with its own role, the dynamic factors of guidance at the central level.

## **6. Two-level game or multilevel governance? The transformations of the European State in the process of integration**

The Lisbon European Council does not propose a legal solution to the essentially political question of the sharing of competencies between the States, the Union and the regions. However, the concept of subsidiarity is above all a political one and does not as such result in legal conclusions in the framework of a relative lack of determination of Community competencies, where several competencies are mixed or shared<sup>36</sup>. The European Council is above all a political body and decides on a political dynamic, a “centripetal orientation of subsidiarity”. The “Lisbon Strategy” and the OMC asked for a change in the role of States in the European integration, as well as within the Member States themselves.

Indeed, we are witnessing a double transformation of the role of the States. Firstly, the States are increasingly networked (at the level of the European Council and of the Council formations) in the new political fields. Secondly, national governments are requested to carry out an internal reorganisation, in the sense of a greater strategic coordination between the various Ministries concerned and around the prime ministers. The OMC strengthens the State in terms of the need for internal coordination. Would its impact lead the EU to a radical rationalisation of the multilevel governance and to a return to the classic intergovernmental method of two-level governance?<sup>37</sup>

This would be too simplistic. National governments accept the need to engage themselves in a process which implies the establishment of European Guidelines, common indicators, a monitoring, and also, in certain cases, embarrassing recommendations from the Commission. Of course, they have a clear double interest: to improve national economic, social and technological performances and the efficiency of public policies, and above all to count on the external constraint (at least in certain countries) to help them gather a larger consensus around the most unpopular internal reforms. Governments can “instrumentalise” the EU in the national public space, which has become a current practice in the EU. The “Lisbon Strategy” and the OMC result in a new international regime in which the limits and guarantees are widely decided by the States. The regime facilitates “collective action” by encouraging information flows, provides arenas for bargaining and establishes methods for monitoring and enforcing policies and contracts”. Even at the highest level, the European Council, composed of prime ministers (and their sherpas’ network), constitutes a new engine of the European integration. Is it nothing but a mere new set of European intergovernmental regimes?<sup>38</sup>

Our answer is negative. By agreeing to take part in the new process, States are also submitted to deep transformations in their preferences, perceptions and respective interests, in the framework of a reciprocal learning process, leading to greater convergence. Moreover, they take risks by agreeing to be judged in this process, which includes supranational authorities and transnational actors and which deals with issues seldom dealt with at European level in the past. In cases where they are foreseen, recommendations from the Commission and the Council could increase the weight of criticism to governments from internal public opinion, economic and social actors, the parliamentary opposition. Last but not least, the result of this process will most likely be a greater convergence between European economic and social systems, and, what seems to us even more important, increased institutional interlinking between national, sub-national and Community authorities.

What is actually happening is a new development of the multilevel governance. It is becoming even more complex, with all that it implies in terms of mutual socialisation between national cultures and societies, but also in terms of increased complexity of the institutional and informal process of governance<sup>39</sup>. There is an increasing number of actors taking part in the multiple processes of coordination and submitting themselves to continuous interaction that can lead to increased European interlinking between the States and their political approaches.

Governmental actors are to some extent obliged to increasingly work with each other within common institutions and to go beyond perceptions and actions which are strongly marked by national history. The evolving multilevel governance is indeed a real challenge: the Commission as a central actor could simply increase its tasks quantitatively, whereas the central level should undertake fewer activities and concentrate on the essential orientations. If the centre widens its distances from the national levels, failure is inevitable. There are numerous wrong ways: the process can be paralysed by the increase in fragmented complexity and the bureaucratic drift of the repetitive exercise. At best, the national public authorities are potentially implied in a mutual learning process at the European level with the goal to set common criteria, to improve the quality of the indicators, to spread best practices.

To conclude, there is an element of truth in both theoretical approaches mentioned: the new role of the European Council and of the Council can strengthen the intergovernmental networks as well as it can, at the national level, as a facilitator of convergence, strengthen the coordination (around prime ministers) of the policy areas concerned. But governments are not the sole actors and States, who are themselves transformed by the new OMC, must reorganise public powers. The question is: will the central strategic orientation and the centripetal tendencies be likely to control the most fragmented aspects of the European multilevel governance and to reinforce a new coherence of public action?

The numerous scientific works on the “communicative and supervision State” provide excellent intellectual support for the hypothesis that, beyond functionalist and intergovernmentalist approaches, a deep transformation of the nature of public power itself is underway in Western Europe.

We have witnessed during the 1970s the crisis of political planning and the emergence of the theories of weak government and, in this context, the emergence of medievalist and hyperglobalising theories of the end of the State. Following the same intellectual dynamics, the Single European Act was interpreted as the beginning of the end of the European State, empty of substance, because of both internal and external processes: indeed, common policies have somehow gradually come to touch numerous fields of State competencies, border control, police, citizenship and immigration, currency, a part of taxation, government of the economy, industrial policy, representation and legitimacy, foreign and security policy. The OMC enables the last strongholds to be challenged: employment, education, research, welfare standards and knowledge society. Classical State sovereignty has completely fallen apart in the globalised world and in particular in the context of European integration.

However, the question of the future and the changes to the European State remains open, and the “Lisbon Strategy” could be placed within this debate. Indeed, we are facing a plurality of national experiences, and some States adapt to the implications of increased interdependence and to the new European and global economy context by developing a new concept of public policy. How? Either in the name of the comparative advantages of nations, as competitor States, or in the perspective of European cooperation, coordination and integration. The “Lisbon Strategy” has relaunched this second option by emphasising politics, the coordination of public policies, and positive integration along with negative integration. It breaks with the Saint-Simonian dream of “non-political” progress: technology and market logic would lead to the weakening of the State and to the transfer of loyalties to the post-national community. A disinterested elite would act as a driving force. The “Lisbon Strategy” breaks with an anti-political, and not only anti-State idea of European integration.

New concepts of public action within a knowledge society, for instance that of supervision State, become current<sup>40</sup>. Public power is seen as a multiplier of communication via the coordination of administrations. It organises the decentralisation of execution, but, at the same time, it highlights the function of strategic synthesis. In this last case, we witness an interpenetration of governments and administrations across Western Europe, that goes clearly

beyond what is described by the intergovernmental approach. Maybe without idealism the States are adapting to the implications of informal economic and social integration, to the imperatives of technological innovation and to budgetary constraints, and are discovering a new dimension of public service.

## **7. Output legitimacy and European public sphere**

The “Lisbon Strategy” is based on the conviction that the efficiency of economic and social policies is a worthy criterion of legitimacy for the EU (output legitimacy)<sup>41</sup>. This opinion is shared by most international scientific literature. According to J. Weiler the “substantial” legitimacy of European integration reached its peak when the procedures of formal legitimacy were the least developed, that is during the 1960s and 1970s. Public opinions identified the European construction with progress, economic prosperity and full employment, because the integration process was complementary to the construction of the national Welfare State systems based on Keynesian policies and national growth compromises. Mass unemployment in the 1990s would be one of the causes of euroscepticism because the EU would be considered not only as inefficient against unemployment, but also as one of the causes of the fall in the employment rate.

Can we expect the positive dynamics of the 1960s and 1970s to reproduce themselves in a post-Keynesian period ?<sup>42</sup> Definitely not with the same balance between national diversities and European convergence as in the past, neither with the same kind of “complementary distance” between the national and the European dimensions of the economic and social modernisation policies. Within the new modernisation strategy, the Commission in collaboration with the Council is called upon to increase convergence by coordinating national policies. Should this fail, there would be an increased temptation to multiply the independent agencies as a kind of alternative to the Commission. The efficiency of central performances will be key to legitimise a renewed European socioeconomic model.

However, numerous problems may arise. Indeed, the multiplication of the Council’s and the Commission’s task in the name of the efficiency of policies (there are around fifty additional tasks consecutive to the Lisbon European Council) will not be without consequences, as far as the balance between effectiveness and legitimacy is concerned. The legitimacy crisis, in the sense of lacking social consensus, runs the risk of getting worse.

Secondly, the benefits of the OMC risk being monopolised by the States, which blame the EU for the unpopular constraints and take credit for the positive consequences of the successes, especially in terms of the domestic legitimacy of governments.

Thirdly, the European political culture of participatory democracy and democratic scrutiny question the new methods demanding innovative forms of input legitimacy. It would certainly be wrong to expect the legitimacy deficit to be absorbed by simply improving the procedures of conventional political legitimacy. Indeed, during the 1990s, public opinions became more eurosceptical and attached to the symbols of national and local sovereignty, despite both the increase of the co-decision powers of the EP and the establishment of a European citizenship. However, the new role of the European Council and the Council raises criticisms because of the marginal role of the EP and the increased bureaucracy of the repetitive annual exercise. They need an answer to be given.

As far as the European Council is concerned, its national legitimacy is very strong because it is based on democratic national elections of governments and prime ministers. National Parliaments have the right to ensure that national plans based on European Guidelines are applied, and increase their control over their respective government European policy in these crucial areas. However, if the legitimacy of the “Lisbon Strategy” is only national, it does not

correspond to the supranational character of the process. Since it is a European strategy, legitimacy should also be supranational. The first question would therefore be to know through which enhanced role of the EP, supranational legitimacy could be reinforced. The practical solution found by the Portuguese Presidency is very interesting: for the first time, the Report of the Presidency of the Council to the European Parliament took place not only after, but also before, the European Council and the EP approved a favourable Resolution<sup>43</sup>. However, this formula has no legal basis and nothing could force the following Presidencies to repeat the successful but risky performance of Mr Guterres and the Presidency before the EP. The question could be raised at the level of the reform of art. 4 TEU, to establish an annual plenary session of the EP, devoted to socio-economic strategy of the EU, before each Spring European Council.

The OMC is a learning process and it will take some time before social acceptance of an increased convergence is acquired. We could witness a risk of the breakthrough, multiplied by the number of policies concerned, of the critical Statements against “neocorporatism and lacking transparency” which emerged from the EP against the European Employment Strategy in October-November 1999 and in 2000. This criticism is backed up by some Member States. Indeed, the socially and economically organised actors see their participation increase (within Committees, *Fora*, etc.) even though they criticise the absence of a central place where concertation on all socioeconomic processes underway would take place. The proposal to organise a Forum of social partners before each Spring European Council was only accepted case by case. If the actors of civil society are not concerned, consulted, implied as partners and negotiators, one of the characteristics of the openness of the new method will be denied. But the mere participation of socially organised actors far from guarantees as great a legitimacy as in the past, because of the representation crisis of the social organisations and the increasingly fragmented lobbying of interest representation<sup>44</sup>. A response to these worries expressed in the name of European citizenship (which would increase the EP’s role of democratic scrutiny in relation to that of co-decider) would be to establish the rule of regular contacts between the Presidency of the Council and the specialised committees of the EP, with regard to the progress of the different chapters of the “Lisbon Strategy and the application of the OMC<sup>45</sup>”.

In general, we would like to conclude with a *caveat*: even though the request for greater social and political participation in the process of the OMC is very diffused, its practice could not be “the panacea”. As such, it could also be a question of rhetorics and the paradox of participation could even lead to the paralysis of the process (because of the over commitment of requests and of their incremental effect), in the absence of a correct balance between governance and government. New forms of interaction and efficient communication between the new methods of governance and civil society should be created, and the EP should strengthen its “synthesis” role.

In conclusion, it is clear that the failure or the paralysis of Lisbon’s ten-year programme would have heavy consequences in terms of EU’s legitimacy in public opinion, which would also entail a decay of the European construction. However, the success of this strategy would reinforce the essential core of the democratic perspective at European level, that is the practice of the values of justice and efficiency; thus, the search would be encouraged for a third way between local and national narrow visions of democracy, on the one hand, and, on the other, the globalist utopias on cosmopolitan democracy<sup>46</sup>. However, the perspective would be that of a new system of democratic legitimacy and governance: multilevel (international, national, supranational, transnational), multifaced (territorial, functional, modern and post-modern) and with a multitude of actors (social, economic, political and cultural; institutional and extra-institutional), rather than that of a classical democratic normative model – federal/constitutional<sup>47</sup> or democrat/republican<sup>48</sup>. Whether the result of this complex

interaction between the dynamics of governance and the dynamics of participation will be a social regime characterised by fragmented lobbying of the groups and the privatising of governance<sup>49</sup> or an innovative model of citizenship and democracy, both State and post-State, is a question that remains open. Of course, an innovative result will not only be the effect of decentralisation of governance in comparison to the traditional State regulation as the optimists see it<sup>50</sup>; it will also depend to a great extent on the success of the dynamics of horizontal and centripetal coordination, as well as on the new methods of government, that is, the orientation given to the multilevel governance.

A new focus for research has appeared: the question of the place of participatory democracy. It should be placed within the framework of the dialectics between the depoliticisation of domestic cleavages as the inevitable effect of the open coordination strategy launched in Lisbon, on the one hand, and, on the other, the development of a transnational public space, including a real debate (between centre-right and centre-left interpretations of modernisation) as a relevant pillar of European transnational politics<sup>51</sup>.

## 8. The “Lisbon Strategy and the political question of the future of European integration

The “Lisbon Strategy” revives the concept of the primacy of politics against a mere administrative and technocratic concept and the practice of piecemeal governance by fragmented authorities. The current decline of Politics was, and is, about to make relevant political decisions impossible both at national and infranational levels. Relaunching political design and reform is a tremendous challenge facing huge obstacles, concrete antipolitical streams, new medievalist and hyperglobalising tendencies.

Secondly, the Lisbon decision is an affirmative and long-term European “grand strategy”, with the ambitious objective to update the European social model and its identity in relation to global competition. It offers an array of new modes of governance, adapted to the issue to be solved. Its potential is enormous in terms of increasing strategic and real convergence and of mobilising national budgets through the open coordination of national and regional policies.

However, the implementation of the “Lisbon Strategy” within the process of European integration is facing three main problems:

1. Although the Portuguese Presidency was proactive, long-term oriented while able to compromise to obtain unanimous decision in Lisbon, the Presidency, particularly that of a relative small country, has little room to manoeuvre, which has consequences for its implementation.

A structural limitation is provoked by the contradiction between the very large scope of the strategy and the very short time available to coherently and consistently implement it. The continuity between Presidencies is assured by the European Commission, but the priorities of Member States and rotating Presidencies are frequently different for geopolitical, prestige, political, cultural and economic reasons. True, the Conclusions of the Nice European Council (December 2000) do often cite the “Lisbon Strategy” as a global framework for socioeconomic policies, include the new “social Agenda” within the “Lisbon Strategy” and call for the Stockholm Spring 2001 European Council to succeed<sup>52</sup>. However, in terms of economic governance and government, the priorities of the French Presidency have been the strengthening of the “Eurogroupe” and the IGC, with controversial results. Indeed, the consistency of the Swedish, Belgian and Spanish Presidencies will be crucial for the success of the “Lisbon Strategy”.

2. A “grand strategy”, to combine legitimacy and effectiveness, would require considerable media investment and communication with the European public opinions, consistent with the much proclaimed awareness of the rules of an information society. The question is whether the European Commission will engage its extraordinary experience in campaigning for common European objectives, including “public anchors”, deadlines, indicators, media and social mobilisation as it did, for instance, with the famous and successful “Europe 1992” campaign (1987-92).
3. The “Lisbon Strategy” and the Open Method of Coordination are part of broader European research on governance and government within the enlarging EU, which can hardly be increasingly divided into many independent parts. Of course, there are different levels of the evolving European construction. But the institutional, legal and constitutional implications of the strategy and the OMC should be elaborated in order to provide an original contribution to the triple post-Nice agenda: enlargement, European Constitution and institutional reform<sup>53</sup>, including “enhanced cooperation”, share of competencies and political perspectives of European integration.

The contribution already provided by the Portuguese Presidency entails very new answers to such highly controversial questions;

- to foster European convergence from the current formal criteria of Monetary Union towards deeper societal and economic convergence;
- to practice open coordination of national policies of all Member States rather than through hard cores and directorates;
- to help the States and public authorities in their transformation as modern supervisory bodies rather than fixing regional, national and European competencies.

<sup>1</sup> Ian Clark (1997), Globalization and Fragmentation, Oxford: Oxford University Press, J.N. Rosenau (1995) "Governance in the Twenty First Century", in Global Governance, 1, pp. 13-43 and C. Crouch and W. Streeck (ed.) (1997), Political Economy of Modern Capitalism. Mapping Convergence and Diversity, London, SAGE. See also R. Gilpin (1993), "Welfare nazionale e norme economiche internazionali", in M. Ferrera (ed.) Stato sociale e mercato mondiale, Torino: Fondazione G. Agnelli and A. Prakash and J.A. Hart (ed.) (1999) Globalization and Governance, London: Routledge.

<sup>2</sup> James N. Rosenau (1999), "A transformed observer in a transforming world", in Studia diplomatica, n.1-2, edited by C. Roosens, M. Telò and P. Vercauteren, pp. 5-15.

<sup>3</sup> Ph.G. Cerny (1997), "Paradoxes of the Competition State", in European Journal of Political Research, n.3.

<sup>4</sup> See the Introduction to the volume by Maria João Rodrigues and particularly the paragraph "Europe at the cross road".

<sup>5</sup> Preamble to the Treaty on European Union (TEU).

<sup>6</sup> Preamble to the Treaty establishing the European Community (TEC).

<sup>7</sup> Ph.G. Cerny (1997), cit.

<sup>8</sup> European Commission (1993), "Growth, Competitiveness, Employment White Book", EC Bulletin, supplement n.6, 1993.

<sup>9</sup> Recently A. Moravcsik (1998), The Choice for Europe, Cornell, Ithaca.

<sup>10</sup> The expression is from J.H. Weiler (1996), "Comunità europea", in Enciclopedia delle scienze sociali, Roma. The 1<sup>st</sup> number, 2000, of the Journal of European Integration is entirely dedicated to the analysis of euroscepticism.

<sup>11</sup> The European Commission has already expressed its openness to the "new methods of governance" in its document of March 2000 which is, among others, at the source of the vast and thorough work of inventory and analysis of the transformations underway in the reality of the EU at the core of the White Book on Governance, July 2001.

<sup>12</sup> W. Streeck (1996), "Neo-Voluntarism: a New European Social Policy Regime?", in W. Streeck and others (eds), Governance in the EU, London: Sage.

<sup>13</sup> F.W. Scharpf (1997), The Problem Solving Capacity of Multilevel Governance, Florence: IUE, and G. Majone (1996) Regulating Europe, London: Routledge.

<sup>14</sup> J. Rosenau é O. Czempiel (1992), Governance without Government. Order and Change in World Politics, Cambridge: Cambridge University Press.

<sup>15</sup> A. Prakash and J.A. Hart (1999) cit., pp. 310-317.

<sup>16</sup> D. Lake (1999), "Global Governance. A relational Contracting Approach", in A. Prakash and J.A. Hart, cit., pp. 51-53.

<sup>17</sup> See O. Young (1986) "International Regimes: towards a New Theory of Institutions", World Politics, 39, pp. 104-122.

<sup>18</sup> A. Prakash and J.A. Hart (1999), cit., pp. 1-24.

<sup>19</sup> Ph.C. Schmitter, G. Marks, F. Scharpf, W. Streeck (1996) Governance in the EU, London: Sage, B. Kohler-Koch (1998) (ed.), Regieren in Entgrenzten Räume, Opladen: Westdeutscher Verlag.

<sup>20</sup> Ph.C. Schmitter (1996), "Imaging the Future of European Polity", in Ph.C. Schmitter and others, Governance in the EU, cit., p. 150.

<sup>21</sup> See the chapter of the book by M.J. Rodrigues on this crucial point.

<sup>22</sup> For the detailed description of the OMC, see the documentation annexed; see also the introductory chapter by M.J. Rodrigues.

<sup>23</sup> Concerning art. 99 (ex art. 103), it is obvious that the multilateral surveillance mechanism is too heavy (two readings by the Council are provided for, before and after the "conclusion on the BEPG" adopted by the

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European Council). The 1st reading could simply be replaced by the report of the Commission to the European Council. Indeed, the sharing of the work between the European Council and the ECOFIN, and the role of the other specialized Councils ought to be precised. The European Council is evoked only once. It is nonetheless the body of impulsion and strategic decision (by unanimity), the political guide of the process, whereas the ECOFIN is a body where legal, formal (by qualified majority) decisions are taken. As for the role of the Commission, it is still too limited at the level of the implementation. It should also be allowed to ask the Member States for information.

<sup>24</sup> Presidency Conclusions (Lisbon European Council), ref. Council of the EU, SN 100/00, Presidency Conclusions (Santa Maria da Feira European Council), Ref. Council of the EU, SN 200/00, Presidency of the EU, Note on the ongoing experience of the Open Method of Coordination, Ref. Council of the EU, 9088/00, 14.06.00.

<sup>25</sup> The evolution of the Council Education is particularly important because the practice of the new method has enabled the development of indicators and new programmes to encourage the mobility of students (which can be strengthened thanks to national budgets. See Nice European Council Conclusions).

The Council Research has also launched a process coherent with the “Lisbon Strategy”. Significant innovations are also underway concerning the Council Employment and Social Policy (See Council ESP of 18 October 2000, and secondly, the approval of the Social Policy Agenda in November). Concerning the potential of effective cooperation in the fight against social exclusion and of social protection, see paper from the Belgian Minister for Employment, Frank Vandebroucke, Toward a European Social Policy: Turning Principles of Cooperation into effective Cooperation, London, 11.11.2000. See also the concluding remarks of the chapter provided by Gösta Esping Andersen.

<sup>26</sup> See chapter of the book by B.A. Lundvall and particularly his remarks on the political dimension of common indicators and of the process of setting them.

<sup>27</sup> J. Goetschy (1997), in Telò/Magnette (ed.), De Maastricht à Amsterdam, Brussels: Complexe. According to J. Delors, “the economic and social resolution adopted in Lisbon is on the right direction”; “it is interesting to see that, in the economic and social field, we are searching for new methods of governance: the directive is not appropriate, simple concertation is not enough” (Hearing of J. Delors before the delegation for the EU of the French Sénat, Paris, April 5 2000, in Agence Europe, 28.4.2000, pp. 3-5).

<sup>28</sup> M. Telò (1999) (ed.), Démocratie et construction européenne, Brussels: Editions de l’ULB.

<sup>29</sup> And the network of Prime Ministers’ Sherpas, who held four informal meetings under the Portuguese Presidency, in preparation for the two European Councils.

<sup>30</sup> This expression comes from Report of the Commissariat Général au Plan, Group lead by J-L. Quermonne (1999), L’EU en quête d’institutions légitimes et efficaces, Paris: La Documentation française, pp. 66-67. It is also one of the main Guidelines of the Commission White Paper on European Governance (July 2001).

<sup>31</sup> See the explanations given in the Hearing of Mr. De Boissieu – Deputy Secretary General of the Council – before the Commission of constitutional affairs of the EP, March 2000.

<sup>32</sup> See Fiona Hayes-Renshaw and Helen Wallace (1997), The Council of Ministers, New York: St. Martin Press. See J.P. Jaquet and D. Simon, “The constitutional and juridical role of the European Council”, in The European Council 1974-1986: evaluation and prospects, J.M. Hoscheit and W. Wessels (eds) (1998), IEAP, Maastricht and J. Cloos, G. Reinsech, D. Vignes, J. Wyland (1993), Le traité de Maastricht, genèse, analyse et commentaires, Brussels: Bruylant.

<sup>33</sup> This Statement has to be placed in the framework of the European debate which preceded the transformation of the Summits into a European Council (1974). See J. Monnet (1976), Mémoires, Paris: Fayard, pp. 591-592. I thank M.C. Franck for having drawn my attention on this interesting chapter of the Mémoires.

<sup>34</sup> Concerning art. 4 (ex art. D), the practice of the Portuguese Presidency has constituted a dynamic compromise between two visions: on the one hand, the maximum of external primacy in relation to other European institutions was achieved at the Special European Council (significantly commented upon using the French words “L’Etat c’est moi”. See A. Manzanella, in La Repubblica, Roma, 25.3.2000, p. 10); the European Council refused the previous drift towards some kind of Court of appeal of the Council and reversed the pyramid of the institutional practice taking up the role of guidance in the process. The European Council covers the three pillar structure and all the activities of the EU (art.3: “the Union shall be served by a single institutional framework”). On the other hand, concerning the implementation of the “Lisbon Strategy” and its continuity in time, the Presidency and the European Council have developed an increased interaction with the EU/EC institutional system, particularly with the Commission.

The decision to establish a Spring European Council is capital for this purpose. It imposes itself as an economic government in relation to the strategy of economic and social modernization.

The two logics are not really completely opposed. A reform of the Treaty could retain, in art. 4, the formula used in the Stuttgart Solemn Declaration of 1983 (refused in Maastricht): “when the European Council acts in the Community matters, it does it as the Council, in the sense of the Treaties”. Or: “when the European Council acts

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as economic government of the Union, it does it as the Council, in the sense of the Treaties". Indeed, the decisions for the beginning stage 3 of EMU constitutes the most important precedent concerning the role of economic government of the European Council: the quite unusual formulation used in art. 121 and 122 offers a third possible track: "the Council meeting in the composition of Heads of State or Government". This formulation was considered an institutional innovation, *ad hoc*, a *sui generis* compromise (D. Simon). But the drawback is that even if the acts adopted shall not be considered as Community acts (with all implicit consequences), this idea could, if applied *in extenso* to the role of economic government of the European Council, reduce its role of political and strategic boost. It is therefore better not to go that far, even in the case of an approximation between the European Council and the Council.

<sup>35</sup> "Le Conseil européen s'est autoproclamé gouvernement économique", these were J. Delors' comments. "By reinforcing the political counter-balance of the ECB, the European Council has thus brought his own answer to the problem of leadership in the EU", has insisted the Swedish Prime Minister, G. Persson (Europe, March 2000).

<sup>36</sup> This is, in part, the interpretation put forward by the Report of the Commissariat au Plan (cit., pp. 99-100) which States that "the EU cannot be happy with the mechanical and ritual call upon the principle of subsidiarity. In the absence of a list of competencies the EU has to call on other methods".

<sup>37</sup> For this theoretical approach see Moravcsik (1998), cit.

<sup>38</sup> S. Krasner (1983) (ed.), International Regimes, Cornell, Ithaca; Moravcsik (1998) cit.

<sup>39</sup> "La politique européenne de l'emploi: réflexions sur les nouveautés de 1999 et leur impact pour la Belgique", in Revue belge de sécurité sociale, 2000.

<sup>40</sup> H. Wilke (1997) Supervisions Staat, Suhrkamp; S. Unselde (1993) (ed.) Politik ohne Projekt?, Suhrkamp (in particular J. Esser, Die Suche nach dem Primat der Politik); R. Voigt (1998) (ed.) Des Staates neuer Kleider, Nomos; Kohler-Koch (1998), cit.

<sup>41</sup> F. Scharpf (1998) cit.

<sup>42</sup> See the contribution of R. Boyer published in the book.

<sup>43</sup> European Parliament, Resolution of the European Parliament on the Lisbon Special European Council, Ref. B5-0236, 0239 and 040/2000, March 2000

<sup>44</sup> G. Falkner (1998), EU Social Policy in the 90s, London: Routledge; H. Wallace and A. Young (1997), Participation in the European Union, Oxford: Oxford University Press; G. Feyertag and Ph. Pochet (eds) (2000), Social Pacts in Europe: New Dynamics, ETUI, Brussels.

<sup>45</sup> It is obvious that the respective roles and competencies of the Commission, the ECB and the organised social actors also ask for a clearer definition. The EP has put forward a proposal already in its March 1999 Resolution, particularly concerning the procedure of the BEPG (art. 99, par. 5). The EP expresses more and more the feeling of being marginalized in a large part of European governance.

<sup>46</sup> D. Held (1995) Democracy and the Global Order. From the Modern State to Cosmopolitan Governance, Stanford, California.

<sup>47</sup> J. Habermas (1991), Die post-nationale Konstellation, Frankfurt am Main: Suhrkampf.

<sup>48</sup> R. Bellamy (1999) "Una Repubblica europea?", in M. Telò, "Quale idea d'Europa per il XXI secolo?", Europa, Europe, n.5.

<sup>49</sup> H. Wallace and A. Young (1997), cit.

<sup>50</sup> O. Czempiel (1992), in J. Rosenau and O. Czempiel, Governance without government?, cit. pp. 250-270.

<sup>51</sup> The "Lisbon strategy" has a timely perspective and calls for policies for the medium term, policies independent from the internal contingencies (electoral, etc.). It depoliticizes in part the stakes (unemployment, social protection, fight against the digital divide, etc.) as internal electoral cleavages, even though it politicizes the fight for employment and social modernization as a European common stake. We have stressed the highly political character of the "Lisbon strategy", both on what concerns its importance for the autonomous identity of the EU at world level and on its implications for the reorganisation of internal powers (hierarchy within the Council). Of course, it cannot just be considered as a centre-left strategy. Indeed, it is the result of a European Council, conditioned also by the political beliefs of its Presidency and its majority. Nonetheless, the approval and the implementation of the "Lisbon strategy" are both new grounds of confrontation and collaboration between the centre-right and the centre-left, in a pluralist Europe. Governments of centre-right, like Mr Aznar's, or which do not represent the traditional continental social democracy, like Mr Blair's, have played a very important role. Inevitably, we witness a large variety of interpretations of the common strategy. The Unions' vision (ETUC) of the OMC (of its fields and modes of application) is not the same as UNICE's. However, the extreme view points are not encouraged. It's a bit like what happens with the national social pacts. We have social pacts managed by the centre-left and social pacts managed by the centre-right. Both centre-left and centre-right contribute to it and the solutions are often a compromise between heterogeneous forces.

<sup>52</sup> See Bulletin Europe, 12.12.2000, European Council, Nice: Presidency Conclusions, p. 10.

<sup>53</sup> The practical shifts in governance made on the Presidency's initiative have not interacted at all with the 2000 intergovernmental Conference on the institutional reforms to be carried out in view of the enlargement.

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Nevertheless, the “Lisbon strategy” does not exclusively concern the policies, but also the EU’s polity. As in the past, alongside the official IGC, another “practical IGC” took place, which produces factual changes parallel to the negotiations between the States concerning their power relations. These important shifts and institutional innovations presented however implications for the long-term process of Treaty reform. The 2000 IGC will indeed not be the last, a new one is already scheduled for 2004. The aspects of the “Lisbon strategy”, essential to the future of the EMU and to the European socio-economic model, presenting general implications for the EU’s governance and government, ought to be included on the agenda of the next IGCs.