

THE COMMUNITY METHOD, THE EU'S "DEFAULT" OPERATING SYSTEM

Renaud Dehousse | *Adviser to Notre Europe - Jacques Delors Institute and director of the Center for European studies of Sciences Po Paris*

This synthesis takes a fresh look at an issue addressed in a number of articles published by *Notre Europe - Jacques Delors Institute* on the Community method and the development of Europe's institutional system. After discussing the reasons frequently put forward for arguing that the Community model is in a critical condition, it offers an alternative interpretation of the situation, viewing the Community method as a form of governance "by default" to which member states regularly resort, however many reservations they may harbour in its regard, when they find themselves forced to cooperate.

Over twenty years ago the then British Prime Minister John Major was (already!) calling the Community method "an outdated idea" as part of a drive to stress the need to experiment with new forms of cooperation among member states. It was the era of the **Maastricht Treaty**, a source of major debate regarding the extent and boundaries of political union.

Over two decades rich in new developments have gone by since then, yet **the debate has barely moved on** from that point. Heads of state and government occasionally stick their necks out to theorise new forms of governance - as Mrs. Merkel did in a major address in Bruges¹ -, to which the representatives of the institutions respond by defending the merits of the Community model². This model continues to be an unavoidable focal point of every debate on Europe's future: when the "constitutional treaty" was being negotiated, for instance, a group of European Convention members, most of them from the smaller member states, chose to call themselves "friends of the Community method". By the same token, even though a great deal has been made of the fact that the sovereign debt crisis has witnessed a boost to the role played by the European Council, whose leadership no one any longer calls into question at this juncture, one of the crucial factors in Europe's response to this crisis has been an **outright strengthening of the powers enjoyed by the Union's supranational institutions**: the European Central Bank has been called on to play a role greatly resembling that of a lender of last resort, the Commission's supervisory powers have been considerably strengthened by the "fiscal compact", and had it not been for the British veto, we could have said the same about the Court of Justice. So it has not only been a one-way affair...

To gain an overview the state of play as it stands today, *Notre Europe - Jacques Delors Institute* asked a number of experts to **review the main aspects of the Union's current governance and the issues that it needs to address**. This paper endeavours to provide an initial summary of their comments.

1. The essence of the Community method

One of the first difficulties which we need to address is conceptual in nature. What exactly do we mean when we use the term "Community method"? In the absence of any widely accepted definition, analysts often have recourse to conflicting notions, thus it is obviously difficult in such a context to determine what it is that complies with the initial model³.

One of the most frequently cited definitions was provided by the Commission in its White Paper on European Governance:

"The Community method guarantees both the diversity and effectiveness of the Union. It ensures the fair treatment of all Member States from the largest to the smallest. It provides a means to arbitrate between different interests by passing them through two successive filters: the general interest at the level of the Commission; and democratic representation, European and national, at the level of the Council and European Parliament, together the Union's legislature.

- The **European Commission** alone makes legislative and policy proposals. Its independence strengthens its ability to execute policy, act as the guardian of the Treaty and represent the Community in international negotiations.

- Legislative and budgetary acts are adopted by the **Council of Ministers** (representing Member States) and the **European Parliament** (representing citizens). The use of qualified majority voting in the Council is an essential element in ensuring the effectiveness of this method. Execution of policy is entrusted to the Commission and national authorities.
- The **European Court of Justice** guarantees respect for the rule of law.⁴.

This definition sheds light on the Community model's two most critical aspects:

- on the one hand, the **delegation of powers** to independent bodies (the Commission and the Court of Justice, to which we would add today the European Central Bank), a principle which unquestionably constitutes the keystone of Europe's institutional system, and indeed the Schuman Declaration already assigned enormous importance to it back in its day;
- and on the other hand, its corollary, the **curbing of sovereign powers** for member states, which accept the eventuality of ending up in a minority when a vote is taken and which submit to EU law⁵.

It also highlights the two sources of legitimacy used to prop up the entire system: the representation of the governments on intergovernmental bodies and the representation of the citizens in an elected parliament.

While it is possible to find equivalents for each of these elements on the international scene, we have to admit that they are resorted to in a far more systematic manner in the European Union⁶. And it is precisely this that accounts for the **originality of the institutional model** which the European Union embodies.

2. A model in crisis?

After the major progress made in the 1980s, a decade marked by the imparting of a fresh boost to the integration process, the **Community method hit a turbulent patch**. Without going into too much detail, we will take a look here at the four main factors in this development which are crucial for us to understand the debate today.

First of all, the difficulties surrounding the **ratification of the Maastricht Treaty** highlighted the fact that the debates on the "democratic deficit" were not merely academic in nature but that they were shared by broad swathes of Europe's citizens. Opinion polls

proved beyond all reasonable doubt that the "permissive consensus"⁷ which had accompanied the start of the European construction process was nothing but a distant memory. Even though integration continues to enjoy a fairly positive image today, the citizens of Europe frequently display a certain amount of impatience with decision-making processes which they do not understand or with decisions which appear to threaten their way of life. Their disenchantment becomes obvious during European elections, where turnout is falling off in a seemingly inexorable fashion.

Secondly, at about the same time governments began to show signs of impatience with what many of them saw as an unlimited expansion of Europe's powers as symbolised by the Commission. So they **tended to multiply their own counterbalancing powers**. The Maastricht Treaty's pillar-based structure was in many ways the first sign of this trend: while accepting the need for European discipline in the spheres falling within the realm of their sovereign powers such as foreign policy, security or justice, member states refused to watch the supranational institutions play a role akin to the role traditionally assigned to them in connection with "Community" matters. Each time any pro-European impulse came to the fore, they responded by setting up *ad hoc* structures with powers only parsimoniously allocated to it: for instance, the high representative for foreign policy, or the Eurogroup and its president, and finally the establishment of a stable president of the European Council who could only interfere with the functions of initiative and mediation which fall to the Commission under the Community model. This growth in intergovernmentalism has clearly been to the advantage of the European Council. Raised to the rank of an institution of the Union by the Lisbon Treaty, it is now part and parcel of the Community institution system⁸.

We can detect a **development** of the same kind taking place **in European policy instruments**. The wave of harmonisation that had marked the programme relating to the achievement of the internal market was followed by a phase characterised by the search for methods designed to cut back on the constraints enforced on national administrations such as result-targeted management, benchmarking, peer supervision and so on. This approach, which kicked in with monetary union, was then raised by the Lisbon strategy to the rank of founding principle underlying the strategies devised to reform the welfare state and to improve competitiveness. It exemplifies the wave of "new modes of governance" in which the Commission is relegated to playing a back-seat role while the European Council is supposed

to play a steering role. All of these developments suggest that there was a deliberate political will to consign to the archives the idea of delegating powers, which lies at the heart of the Community method, in favour of what has been called "intensive transgovernmentalism"⁹.

And finally, over the same period, a **massive dose of parliamentarianism** was injected into the European system. With each reform of the treaties, the European Parliament's legislative, budgetary and supervisory prerogatives were increased, and its status rose in the space of a mere two decades from that of consultative assembly to that of co-legislator on an equal footing with the Council.

The Commission, the very heart of the Community model, has had to adapt to the increasingly powerful roles of its interlocutors. Its powers of initiative are obviously influenced by the European Council's steering power¹⁰, and it is subject to tighter parliamentary supervision than in the past. It displays far less political strength than used to be the case¹¹. So, does this mean that we have seen the end of the Community method?

3. The Union's operating system by default

In my view, the answer to the above question is "no". Despite the developments mentioned earlier, there are numerous factors suggesting that the model is still relevant today.

First of all, we should note that this **model's field of application** has been considerably extended, including over the past few years. Even though the ECSC treaty ended fifty years after it came into force, variants on the governance model that it originally set up have gradually been introduced in new spheres, some of which (for instance monetary policy, or justice) are clearly part and parcel of the hard kernel of member states' areas of sovereign authority. Some observers have even detected a hint of the "Community spirit" in the sphere of defense, despite its being generally considered a matter of "high politics"¹².

The staying power of the Community model owes a great deal to its flexibility, to the **ability to adapt** that it has displayed. It has shown itself to be capable of taking the major innovations of the last two decades in its stride. The European Parliament, whose powers are far vaster than is generally supposed, has proven capable of carving out a place in the sun for itself without calling into question the consensus-based approach to decision-making, which is crucial for the political stability

of the whole¹³. The doubling of the number of member states through the enlargement processes of 2004 and 2007 does not appear to have had the negative impact on the legislative body's productivity that many feared it might have. A dense network of bodies and committees has allowed the newcomers to assimilate the rules of play relatively easily, as shown by the dissemination of voting practices within the Council¹⁴.

The place of the Community model can also be explained by the **failure of the various alternatives** devised over the years. The development of the system into the "pillars" of Maastricht, as discussed above, is extremely revealing in this connection. Where justice and home affairs were concerned, the safeguard measures designed to protect national sovereignties against any aspiration on "Brussels'" part to control them have gradually given way to ordinary Community regulations. And even though the development process is slower in the "foreign" policy field, the Lisbon Treaty still managed to forge a rapprochement between the high representative's services and those of the Commission, which are now partly merged in the new European External Action Service. This development is easily explained: in both cases the national authorities were able to take stock of the ineffectual results achieved by the intergovernmental solutions enforced in Maastricht. The same air of failure hung over the Open Coordination Method (OMC), with which it had proved impossible to achieve the (arguably excessive) goals assigned to it by the European Council in Lisbon in March 2000. In other words, the intergovernmental aspects built into the European institutional system at regular intervals often end up spawning **solutions more or less directly inspired by the Community model**¹⁵.

That model's crucial role also came clearly to the fore when innovation was required to produce structural responses to the challenges threatening the stability of the eurozone. Even if some of the players argued that the time was ripe for intergovernmentalism¹⁶, the **innovations put in place by the member states** were **heavily tinged with supranationalism**: a strengthening of the Commission's powers of supervision, the assignation to the European Central Bank of powers of supervision over the financial markets, and so on. This is all the more remarkable if we consider that it came at a time when most of the governments appeared to be primarily concerned with maintaining their own power with regard to Europe. Given that they were in great haste to set up reliable solutions, however, they agreed to fall back on mechanisms with a clear supranational bent – for want of anything better, one might say.

Conclusion

Yet we should take care not to draw any excessively conservative conclusions from this. If the Community method has been able in this context to prove that it plays a central role in Europe's political system, it is partly because it has met certain functional needs – including in particular the need for mechanisms capable of allaying the tension between member states – but also largely because it has proved capable of adapting

to very different conditions from those prevailing at the time of its invention in the 1950s. We may safely wager that the recent strengthening of the Union's powers is going to focus renewed attention on the issue of its legitimacy in the eyes of the peoples of Europe¹⁷. Is it going to be possible to innovate and to reconcile the consensus-based rationale which guides the Union's work with a heftier dose of democracy? The European system's long-term stability depends to a large extent on the answer to that question.

1. Angela Merkel, [Speech](#) delivered at the opening ceremony of the 61st academic year of the College of Europe in Bruges on 2 November 2010.
2. See, for instance, President Barroso's speech at the [seminar on the Community method](#) organised by *Notre Europe* and the BEPA on 28 February 2012.
3. In this connection see Philippe de Schoutheete, "[Decision-Making in the European Union](#)", *Policy Briefs*, No. 24, *Notre Europe*, March 2011 and Paolo Ponzano, "[Intergovernmental method or Community method: an irrelevant debate?](#)", *Policy Briefs*, No. 23, *Notre Europe*, March 2011.
4. European Commission, *European Governance. A White Paper*, 25 July 2001, p. 8.
5. In this connection some people have spoken on "normative supranationalism", Joseph H.H. Weiler, *Il sistema comunitario*, Bologna, Il Mulino, 1985.
6. R. Dehousse (ed), *The 'Community Method'. Obsolete or Obsolete?*, Basingstoke, Palgrave Macmillan, 2011.
7. The expression was formulated by L. Linberg and S. Scheingold, Linberg, *Europe's Would-be Polity. Patterns of Change in the European Community*, Englewood Cliffs, Prentice-Hall, 1970.
8. Philippe De Schoutheete, "[The European Council and the Community Method](#)", *Policy Paper*, No. 56, *Notre Europe*, July 2012.
9. Helen Wallace, 'The Institutional Setting', in Wallace H. and Wallace W. (eds), *Policy-Making in the European Union*, Oxford: Oxford University Press, pp. 3-37.
10. Daniela Corona, Costanza Hermanin and Paolo Ponzano, "[The power of initiative of the European Commission: a progressive erosion?](#)", *Studies and Reports*, No. 89, *Notre Europe*, January 2012.
11. Jean-Paul Jacqué, "[The new discourse on the method](#)", *Tribune*, *Notre Europe*, September 2011.
12. J. Howorth, 'The Political and Security Committee: A Case Study in 'Supranational Intergovernmentalism'', in R. Dehousse (ed), *The 'Community Method'. Obsolete or Obsolete?*, Basingstoke, Palgrave Macmillan, 2011, pp. 91-117.
13. Olivier Costa, Renaud Dehousse and Aneta Trakalová, "[Co-decision and 'early agreements': an improvement or a subversion of the legislative procedure?](#)", *Studies and Reports*, No. 84, *Notre Europe*, March 2011.
14. Stéphanie Novak, "[Qualified majority voting from the Single European Act to present day: an unexpected permanence](#)", *Studies and Reports*, n°88, *Notre Europe*, November 2011.
15. Richard Corbett, "[On the Community method](#)", *Tribune*, *Notre Europe*, September 2011.
16. See, in particular, the [speech](#) delivered by Nicolas Sarkozy in Toulon on 1 December 2011.
17. Florence Chaltiel, "[The move from a functionalist to democratic method](#)", *Tribune*, *Notre Europe – Jacques Delors Institute*, October 2012; Miguel Maduro, "[Triggering European politics to reinforce the Community method](#)", *Tribune*, *Notre Europe – Jacques Delors Institute*, October 2012.

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Europe for Citizens Programme



info@notre-europe.eu
19 rue de Milan
75009 Paris - France
www.notre-europe.eu

