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A little discourse on method(s)

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Especially after the entry into force and subsequent implementation of the Lisbon Treaty, the traditional distinction (and opposition) between the so-called 'community' and 'inter-governmental' methods in EU policy-making is less and less relevant. Most common policies entail a 'mix' between them and different degrees of mutual contamination. Even the 'Union method' recently proposed by Chancellor Angela Merkel raises more questions than it solves – although it may trigger a constructive debate on how best to address today's policy challenges.

In the recent public debate over the direction of the European integration process – following the entry into force of the Lisbon Treaty and the onset of the euro zone crisis – arguments have somewhat polarised between the defenders and guardians of the "Community method", on the one hand, and, on the other, the advocates of a more intergovernmental approach to EU policy-

making – seen as either a desirable trend or an inevitable drift.

In particular, the speech given by German Chancellor Angela Merkel on 2 November 2010 at the College of Europe in Bruges – where equally seminal interventions were made in the past, starting with Margaret Thatcher's in 1988 – put forward the notion of a "Union method" (UM) as being more in line with the current state of affairs and policy development in the EU, with special emphasis on the role of the Member States. She defined it just as “coordinated action in a spirit of solidarity” – and gave energy policy as a good case in point¹.

Nomina sunt consequentia rerum, names are a consequence of things, one is tempted to say following Thomas Aquinas. Speculations now abound in the international media on whether Germany – for decades the key defender of an "ever closer" Union and of the role of common institutions and rules-based order – has turned its back on the Brussels executive and put all its money (not only metaphorically) on the European

¹ <http://www.coleurope.eu/template.asp?pagename=speeches>

Parliament and especially the Council - let alone the European Central Bank².

One is also tempted to say, however, that such polarisation and characterisations are largely instrumental, aimed as they often are at pulling the cover in one or the other direction at a time when crucial decisions are being taken at EU level.

In fact, neither "method" fully corresponds to the realities of power and policy-making in today's European Union - which are, alas, much more complex than that, and certainly difficult to encapsulate in a single, all-encompassing formula. Indeed the US motto, *e pluribus unum*, is hardly applicable here.

Even in the past, and especially over the last two decades, the so-called 'communitarian' and the 'intergovernmental' approaches often constituted rather "ideal-types" *à la* Max Weber than concrete methods or models - and they rarely operated in a 'pure', unadulterated form. Still, they have long monopolised (and often polarised) both academic research and public discourse.

Maybe, therefore, it can be useful to resort to other methods and philosophers – starting with Descartes, with his drive to 'deconstruct' the *acquis* left by Aquinas, yet combined to some empirical evidence *à la* Hume³ - in order to clear the fog and unveil the myths

² It is not only a matter of 'shares', be they counted in terms of MEPs, (re-)weighted votes in the Council, or Bundesbank clout: a German national is Secretary-General of the European Parliament (Klaus Welle) and another one is about to become Secretary-General of the Council (Uwe Corsepius, a close aide to Chancellor Merkel), succeeding Pierre de Boissieu.

³ René Descartes' *Discours de la méthode* (1637) is universally considered the turning point in the history of modern philosophy, marking the beginning of rationalism. David Hume's *A Treatise of Human Nature* (1739) balanced that off with a strong plea for empiricism.

that currently wrap the public debate in and on the EU.

Ex uno plures?

What's in a name?, Shakespeare's Juliet famously said to her Romeo. Indeed, a stringent definition and agreed description of the "Community method" (CM) is hard to find.

A few years ago Helen Wallace framed what she called the "traditional" CM – based on the precedent created by the early Common Agricultural Policy (CAP) – as follows:

- a strong role delegated to the Commission in the design/brokering/execution of policy as well as in the management of its external ramifications;
- an empowering role for the Council through strategic bargaining and package deals;
- a locking-in of stakeholders (the sectoral interests) though a highly rewarding co-optation into the European process;
- an engagement of national agencies as the subordinated operating arms of the agreed common regime;
- a limitation of the influence of national MPs and of the opportunities for the European Parliament (EP) to impinge;
- an occasional (but defining) intrusion by the European Court of Justice (ECJ) to reinforce the legal authority of the Community regime;
- collective resourcing of the policy as an expression of sustained European 'solidarity'.

This template came to epitomise a form of 'supranational' policy-making in which powers were transferred from the national level to the EC/EU. How far it actually fits with reality is a moot point, even in the case

of agriculture - and already the fisheries regime, that was meant to imitate the CAP, has turned out to be different. Nonetheless, this particular version of the CM shaped its 'image' among both practitioners and commentators for quite a while⁴.

Helen Wallace highlighted also the fact that, since the mid-1980s, the EC/EU started operating through at least two *additional* "methods".

To begin with, as the competition regime took root and the Single Market developed, the call for and drive towards *regulation* became ever stronger. The strength of the European legal process, the machinery for promoting technical cooperation, and the relative distance from parliamentary interference were all factors that encouraged this trend further. Indeed, the EC/EU was particularly well equipped for generating an overarching regulatory framework that could combine cross-border standards with country differences.

The main features of this regulatory "method" included:

- the Commission as the architect and defender (in a quasi-judicial capacity) of regulatory objectives and rules, often in connection with stakeholders and experts;
- the Council as a forum for agreeing minimum standards and the direction of harmonisation, complemented by mutual recognition of preferences and controls;
- the ECJ as the main means of ensuring that the rules are applied reasonably fairly

and evenly, backed by national courts for local application;

- the EP as one of several means for considering also non-economic factors, with increasing legislative powers but little leverage on implementation.

In addition, over the years the EU policy process has been increasingly caught in negotiations and controversies over the *distributional* impact of integration. In this on-going process - that indirectly involved also the CAP - the introduction of "cohesion" policies marked a shift towards programmes aimed at tackling economic and social divergence and supporting the more backward regions and/or societal groups.

In addition, various other spending instruments were introduced in fields such as research, with programmatic rather than *re*-distributional aims.

All in all, such distributional "method" comprised:

- the Commission as the deviser of programmes, in partnership with sub-national authorities and/or sectoral stakeholders and agencies;
- national governments in the Council agreeing (under the pressure of various authorities and stakeholders) to a budget with some distributive elements;
- a Parliament in which MEPs often constitute an additional source of pressure from territorial politics in their constituencies;
- local and regional authorities benefiting from engaging in the EU arena and relying (since 1993) on their own institution, the Committee of the Regions (CoR).

Incidentally, it was this opening for direct contacts between the European and the sub-national levels of government that prompted

⁴ H.Wallace, *An Institutional Anatomy and Five Policy Modes*, in H.Wallace, W.Wallace, M.A.Pollack (eds.), *Policy-Making in the European Union*, 5th edition, Oxford University Press, 2005, 49-90. Now see also R.Dehouse (ed.), *The 'Community Method': Obsolete or Obsolete?*, Palgrave-Macmillan, 2011.

the coinage of the term "*multi-level governance*" to characterise the EU process more generally.

More of the same?

Finally, it is arguable that - over the past decade in particular - the spectrum has widened further by including the so-called "open method of coordination" (OMC), usually associated with the 2000 *Lisbon Strategy* on Growth and Jobs.

It involved 'soft' policy incentives to shape behaviour at national level though 'benchmarking' and systematic policy comparison, but without concrete enforcement and implementation tools.

Employment policy at EU level is another case in point - albeit with some nuances.

As such, the OMC can be considered as the closest thing to - or just a variation on - the "Intergovernmental method" (IM), but from within the scope of policies that are somewhat linked to the first 'pillar'. In retrospect, however, its impact has proved quite modest, as the dismal record of the Lisbon Strategy up to 2010 shows.

For its part, what may be called "traditional" IM implies:

- the active involvement of the European Council in setting the overall direction of policy;
- the predominance of the Council of Ministers (or equivalent) in consolidating cooperation;
- the limited/marginal role of the Commission, as compared to the CM and the other "methods" analysed above;
- the basic exclusion of the EP (bar the budget) and the ECJ from the circle of

involvement in policy formulation, execution and control;

- the adoption of special arrangements for managing cooperation (in particular the Council Secretariat);
- the relative opaqueness of the process, notably to national parliaments and citizens;
- the capacity, on some occasions, to deliver substantive joint policy in areas where nothing existed previously.

Yet again, even the IM presents a number of significant variations – especially if one takes into account such diverse areas as *foreign and security policy* (CFSP/ESDP) and *justice and home affairs* (JHA) – which, according to the Maastricht Treaty, coincided with the second and the third 'pillar', respectively, of the EU construction.

In both cases the assets and competences of the Member States were (and still are) predominant. This said, even in the case of the former it is sometimes difficult to characterise EU "foreign policy" as 'purely' intergovernmental: the role played by Javier Solana in his decade in office as High Representative for CFSP (1999-2009) went often well beyond the representation of the lowest common denominator among the Member States. Also the structures resulting from that have become of a more 'hybrid' nature than they used to be previously⁵.

Furthermore, the Commission played a distinctive role and carried out specific policies in external relations, development and humanitarian aid, and of course trade – let alone enlargement as a sort of foreign and

⁵ See the recent reappraisal by Jolyon Howorth, *Decision-Making in Security and Defence Policy: Towards Supranational Intergovernmentalism?*, KFG Working Paper, Freie Universitaet Berlin, no.25, March 2011.

security policy "by other means" (to paraphrase, this time, Carl von Clausewitz).

As for JHA, different "methods" have developed over time and still in part coexist. The Schengen Agreements were first deliberately signed and implemented outside the EU treaty framework, then incorporated into it. Meanwhile and ever since, increased migration flows and mounting challenges from terrorism and cross-border crime have fostered demand for trans-national policy cooperation.

This has led to drawing together different processes of cooperation, including the transfer of some JHA issues to the (now old) first 'pillar'. On top of that, a mixed pattern of what, yet again, Helen Wallace called "trans-governmentalism" remains in place, with the addition of a growing number of specialised agencies and legal agreements based on conventions – not to mention the so-called 'Comitology'.

Another interesting case to consider is *European Monetary Union* (EMU). On the one hand, the European Central Bank and other related bodies have established a variation on the CM for monetary policy proper (with the ECB as a functional quasi-equivalent of the Commission). On the other hand, as far as macroeconomic policy is concerned, something similar to the OMC has long prevailed, while the role played by the Commission in the broader economic policy area has varied over time depending on the willingness and readiness of the Member States (starting with Germany) to have it on board – at least to date.

It is also worth noting that the three domains mentioned above – CFSP, JHA and EMU – have been by far the most dynamic areas of EU policy development since 1999. In each

case the EU framework has become more accepted, in a broad sense, but the detailed institutional arrangements have also become increasingly *un*-typical.

This is also to say that all these "methods" tend also to overlap and 'migrate' - so to speak - in response to new policy challenges as well as to changing preferences and feedback effects among the Member States.

Such overlaps and 'migrations' occur not only across but also within the old 'pillars', and produce a patchwork of modalities and procedures that is often cumbersome and illegible from outside (especially by ordinary EU citizens). Furthermore, the vector of such migrations is not always one and the same: whereas a number of policies areas have indeed been increasingly 'communitarised' (albeit to different degrees), notably *energy policy* has moved in the opposite direction - especially if compared with the 1950s and 1960s.

A further factor to consider in this context is the growing emphasis, also in the treaties, on so-called "subsidiarity". In retrospect, this can be seen as a stark warning by the Member States - not just their governments but also parliaments and even some regional bodies - to the Commission not to widen the scope of its interventions in areas of primarily national competence. Containing the expansion of the CM permits also to ring-fence some policy domains from the jurisdiction of the ECJ.

Last but certainly not least, with the introduction in stages – from Amsterdam (1999) to Lisbon (2009) – of "enhanced cooperation" (EnCo) an additional "method" has been brought to the fore: namely one that cuts across policy areas (albeit with significant variations) and lies at the juncture

between a decision-making procedure and a form of policy implementation.

In a previous (academic) life, former Finnish Foreign Minister Alexander Stubb made a crucial and almost prophetic distinction between “pre-defined” and “enabling” EnCo clauses⁶.

Accordingly, EMU is a case of the former – *ante litteram*, in a way – as it spells out in advance the domain it applies to, the participation criteria and the functional modalities of such cooperation. What the Lisbon Treaty calls “permanent structured cooperation” (PeSCo) in defence is potentially another one – albeit with a less stringent format, a less precise scope, and no evident obligation or deadline for implementation.

The “enabling” form of EnCo is most likely to be applied within the JHA area: it was first threatened in late 2001 (but not put in place, leading instead to a compromise at 15) on the European arrest warrant; and it has been enforced recently for cross-border divorce cases.

In principle, however, the “enabling” EnCo clauses are applicable also to other domains – as is happening now with the European Patent regime and may happen one day, possibly, with the corporate tax base. And one cannot entirely rule out that “differentiated” (or flexible, or multi-speed) integration becomes – within or without EnCo proper – a recurrent “method” for an ever *larger* Union.

⁶ A.C.-G.Stubb, *A Categorisation of Differentiated Integration*, “Journal of Common Market Studies”, no.2 (34), June 1996, 283-295.

Lisbon and after: unity in diversity?

With the Lisbon Treaty, in a way, the plot has further thickened.

In terms of decision-making proper, for instance, the process of extending *co-decision* (now called “ordinary legislative procedure”) has continued and even intensified: it now applies to some 80 % of EU legislation, including also the original CAP. In and of itself, this alters significantly some of the key features of the “traditional” CM and blurs once familiar distinctions – as it applies to areas of both *exclusive* and *shared* EU competence.

The recourse to *qualified majority voting* (QMV) has also widened and represents now the rule, with some significant exceptions still in place. However, all available empirical evidence from the analysis of voting behaviour in the Council shows that QMV works rather as a deterrent against obstruction than as a proper decision-making tool. In other words, the Member States tend to prefer consensual decisions – even when they could do otherwise, as in trade matters – and resort to a vote (typically on distributional, and sometimes regulatory, issues) only and mainly for domestic political purposes⁷.

As already mentioned above, *EnCo* has also been employed as a deterrent against gridlock and as a facilitator of decisions.

For its part, *constructive [qualified] abstention* has been used only once since it was introduced

⁷ Germany, of all countries, is a famous case in point, as it was the most frequent ‘loser’ in Council votes throughout the 1990s. Calling a vote and being (seen) in a minority was only meant to show to domestic stakeholders that the government had defended specific national interests (albeit in vain), while the overarching common/general interest – as defined also by Germany – had eventually prevailed.

with the Amsterdam Treaty - notably when the EU-27 launched the EULEX operation in Kosovo in February 2008 (and Cyprus abstained). Interestingly, however, it is now being considered as a tool in the framework of the so-called "mutual agreement" procedure just adopted for the Euro Plus Pact.

As a result, the picture is even less clear-cut in terms of "methods". If previously the distinctions were already less of nature than of degree⁸, now they are further blurred and increasingly problematic.

On the one hand – banal as it may sound – the treaty has given full personality to the Union, thus indirectly 'terminating' the Community proper. At least formally, therefore, it is inappropriate to continue referring to the CM. A bit less formalistically, it is arguable that the CM worked best when the Member States agreed in advance on the policy goals to pursue *through* it – as a means to a shared end, that is, rather than a magical device to overcome fundamental differences. It is equally arguable that such agreement has been easier to achieve at 6/9/12 than at 15/25/27: in other words, the increasing 'hybridisation' and cross-contamination of "methods" is also the combined effect of decreasing policy convergence and declining internal homogeneity inside the EU.

On the other hand, especially in the field of foreign policy and external relations, the multi-hatted role of HR/VP Catherine Ashton as well as the operation of the three-armed European External Action Service (EEAS) supporting her⁹ do indeed challenge

all traded views and conventional approaches. And even the function carried out (and the interpretation given to it) by Herman Van Rompuy as President of the European Council may end up putting into question - at least in terms of substance - the contours of the "traditional" IM, as already did Solana's.

There are, of course, other plausible reasons for the growing diversification and multiplication of "methods" and the relative decline of the old CM.

To start with, the change in the composition of the Commission - with one Commissioner per Member State since 2004 - has *de facto* entailed a political disinvestment on the part of the bigger EU countries, which used to have two representatives inside the college (and often from different political camps, which further increased its legitimacy). Germany's progressive detachment, in particular, can be attributed also to the resulting mismatch between its formal weight in the college (now equal to that of mini-States) and its substantial weight in terms of population and GDP, which is now reflected both in the EP and in the new voting system for the Council (as from 2014) - but no longer in the Commission.

Moreover, especially over the past few years, decision-making in the EU at large has become increasingly "presidentialised". This is reflected in the formalisation of the European Council as an institution in its own right - prompted by the Lisbon Treaty - but also in the actual transfer of political deal-making from key Council formations (especially the GAERC and now also the ECOFIN) to the meetings of Heads of State and Government – which have indeed

⁸ See the excellent analysis by Philippe de Schoutheete, *Mode de décision dans l'Union*, "Les Brefs", Notre Europe, no.24, mars 2011.

⁹ For a preliminary assessment see A.Missiroli, *The EU 'Foreign Service': Under Construction*, RSCAS Policy

Papers, no.4/2010, Robert Schuman Centre for Advanced Studies, EUI.

become ever more frequent. Such mounting politicisation and public exposure have further weakened the CM, which was designed to find apparently technical solutions to political problems and to project policy choices long rather than short term.

Finally, the growing power(s) of the EP will probably have a much bigger impact on *all* "methods" than previously imagined. Not only have the new prerogatives of MEPs just started being exercised quite assertively, but some of these are also being used to explore the possibility of acquiring *additional* ones in the process. This would have far-reaching implications – in "methodological" as well as systemic terms – for all other institutional players in the EU, generating unexpected outcomes and unintended consequences.

A tale of two methods?

This is why the current European public "discourse on methods" and the resulting polarisation between CM and IM - with Merkel's UM as a dark horse - appear superficial and, above all, not to the point. They also sound artificial and mostly tactical (regardless of the good intentions and candour of some of the discussants). But they are also dangerous as they may blur the real terms of the policy debate and force players to take sides, thus making the construction of a viable consensus and the enforcement of effective policies more elusive.

Two points deserve to be made in this respect. First, the tension between the CM and IM has never been - and should not become now - a 'zero-sum' game. True, the Legal Services of the Council and the Commission seem to engage sometimes in pre-emptive strikes and trench warfare - and to act as "guardians of the methods" - when it comes to legal competences. Yet policy

tools rarely lie in one camp only, and the sheer scale of the current challenges makes them all indispensable. It is their most suitable 'mix' that should be addressed, not the relative size and visibility of each ingredient.

Second, even if one accepts that the CM lies at one end of the spectrum and the IM at the other - in a sort of "ideal-typical" continuum - the reality and the practice of EU policy-making show that actual procedures often fall in-between and, even more importantly, continue to move and evolve along that line. Indeed, it is no secret that European integration has tested and taken different avenues over time – and, with and after the Lisbon Treaty, the old set of (more or less) distinguishable "methods" is truly gone.

As a consequence, Chancellor Merkel's fairly vague reference to an emerging "Union method" - yet again, unfortunately, in the singular form - should rather be taken as an invitation to consider the impact of the ever growing areas of *shared* competence on EU policy-making. It could also be seized as an opportunity to streamline the current proliferation of 'hybrid' procedures and reassess the continuing (if ghostly) presence and resilience of the old 'pillars', despite their formal suppression by the Lisbon Treaty.

Seen by many in the CM camp as a wolf in sheep's clothing, the UM is actually little more than a blank sheet, especially if cleared of the inevitable concessions to the 2009 German Constitutional Court's ruling on the Lisbon Treaty. The real debate (and controversy) should therefore focus on how to fill that sheet with recipes which may prove both effective *and* beneficial for the overall integration process.

This is why a strong dose of pragmatism and open-mindedness is absolutely necessary - but probably not sufficient.

Former US President Bill Clinton recently argued that the 21st century demands a "whatever works" approach. In and for the EU, however, such naked pragmatism needs to be combined with hard evidence regarding policy effectiveness - which may result in slightly different recipes according to the area(s) in question - as well as robust confidence-building measures between institutions, Member States and also citizens. Mutual trust and collective determination are essential ingredients for any current or future recipe, and especially the former – mutual trust – has been severely dented by the sovereign debt crisis.

One thing, however, is certain: a continuing controversy over the 'optimal' method - as though there was a one-size-fits-all approach to the complex policy challenges of our time - is useless and even counterproductive.

No past or contemporary philosopher seems able to offer a convincing method to meet this particular demand, with the possible exception of Karl Popper and his evolutionary epistemology whereby not only our knowledge but also our aims and standards grow through critical tests and an unending process of "trial and error"¹⁰.

While continuing the inquiry, therefore, it may be wiser at this stage to resort to Lev Tolstoi's *Anna Karenina* (1877) and its famous opening line:

"happy families are all alike; every unhappy family is unhappy in its own way"

¹⁰ Articulated in his *Conjectures and Refutations* (1963), it is widely considered the foundation of 'critical rationalism' and the liberal approach to the evolution of scientific knowledge.

Family life in the EU lies somewhere in the middle: while *e pluribus unum* appears an impossible goal, at least for now, the pursuit of (collective) happiness remains a legitimate and worthy one.

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