Governance lunchtime seminar, Tuesday 16 October

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European Governance and Multilevel Constitutionalism

Chairman
Mr. P. Ponzano, Director in the Secretariat-General

Professor Pernice stated that multilevel constitutionalism interprets established structures in a different way: national constitutions and the European Treaties together form a single constitution. The citizen should be perceived as the origin of this constitution. Citizens are also the source of legitimacy for national and European levels of government. Integration will be a constitutional process affecting both levels. A constitution is a process that changes according to circumstances in society. There are five key elements at work here:

- Traditionally, only states have constitutions. We cannot talk about a European constitution so long as it is not a state. In the German concept, a state is given a constitution. Another concept would be that there is no legitimate public power except that created by a constitution. A community would thereby define the respective rights and duties between itself and the government.
- The Member States and the European community are two different instruments by which people organise themselves. Member States have integration clauses on how supranational authority is to be organised. At IGCs, states should regard themselves as agents acting on behalf of their citizens.
- As regards conflict of laws, the established system provides for a single solution (either European or national law) in each case. The Court of Justice talks about the autonomy of European law. Its primacy makes it a single system of law.
- European citizens have several identities. In the status negativus, European identity is expressed by definitions of status in the Treaty. Freedoms are invoked against the Member States on the basis of European law. The status activus relates to rights of participation in procedures, the right of recourse to the courts and the right to be appointed as members of institutions. The protection of fundamental rights in the Treaties distinguishes the EU from other international organisations.
- National courts are European courts. National governments should exercise their control over the Council, which makes European law. Although the Amsterdam Treaty provides that Member States must act as agents for the EU, national authorities are the basis for this system. We cannot therefore say that we have two levels of governance.

Conclusions on the White Paper on European Governance:

The White Paper provides a very narrow, institution-, state-, government-centred definition of governance. Governance should be defined as all the means of self-rule in a society, whereby the European Union is only one of those means. In multilevel governance, we should not focus on institutions but on citizens. We should couple this
with a consideration of how the EU is organised as an institution to cope with global challenges.

Secondly, we must consider the "intermediate gap" between national and European levels of governance. There is no clear reference in the White Paper to how this can be structured. Although the Paper looks at networks, it does not explain how the political will is formed in the Member States. Governance also means influencing networks through a variety of channels. The whole issue of communication is insufficiently addressed in the White Paper.

In terms of accountability, the fact that policies at European level are internal policies must be made clear. National governments are not ready to accept this. Opening the Council to the control of national representatives would be one way of overcoming this problem.

Regional authorities and national parliaments should also be involved at an early stage in order to make for better drafting of EU law. Only national experts are consulted at the moment. There should also be a round-table of representatives from local and regional authorities.

Finally, the White Paper refers in an exaggerated way to the executive responsibility of the Commission. The system has up to now been based on the executive competence of Member States. It is difficult to understand what point the Commission is making here.

In conclusion, Professor Pernice stated that he welcomed the White Paper for its use of the Community method. However, this should be complemented by an appreciation of the role of the individual and the media.

Questions and answers

Q: Networks would not function properly where rules and responsibilities are too rigidly defined, yet the legitimacy of European legislation could be strengthened if areas of responsibility were clearly enumerated. Where is the happy medium?

A: The issue of a catalogue of competences is dead, even in Germany. Shorter provisions should be used to regulate particular areas. Only the EU could harmonise legislation. Networks simply come about if there is a specific issue to focus on; they ought not to be structured.

Q: Governance working groups were looking at American models, not German ones, which explains why there is so much attention given to agencies. How did Germany address the problem of detailed rules that do not work because they cannot cover every possible scenario?

A: The American model would constitute a real departure from established practice. There are many more civil servants in America than in the EU In Germany, as in other Member States, Community law is still seen as foreign law. Even judges simply apply national law and hope this will be accepted.

A number of participants stated that one should not focus on statements in the White Paper about the executive responsibility of the Commission. These were designed to
promote efficiency in the regulatory process between the Council, the Commission and Parliament.