

**EUROPEAN GOVERNANCE: A WHITE PAPER  
WORKING SUMMARY OF THE PUBLIC RESPONSE**

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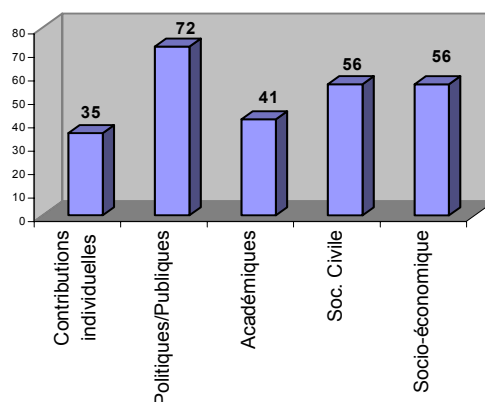
## 1. ON EUROPEAN GOVERNANCE – GENERAL REACTION

### 1.1 *The response*

1 - On 25.07.2001, the Commission published “European Governance: A White Paper” and launched a consultative process which ran until 31.03.2002. As a result of the consultation process, **260** written **contributions** were received.

2 - The Governance White Paper has engaged in more or less equal measure **public/political authorities (27%)**, **organised civil society (22%)**, and **socio-economic actors (22%)**. There has also been a substantive **academic response (16%)**, while contributions from **individuals** have accounted for **13%**. The response from public/political authorities has almost exclusively consisted of contributions from local and regional authorities<sup>1</sup>.  
(See tables 1 & 2)

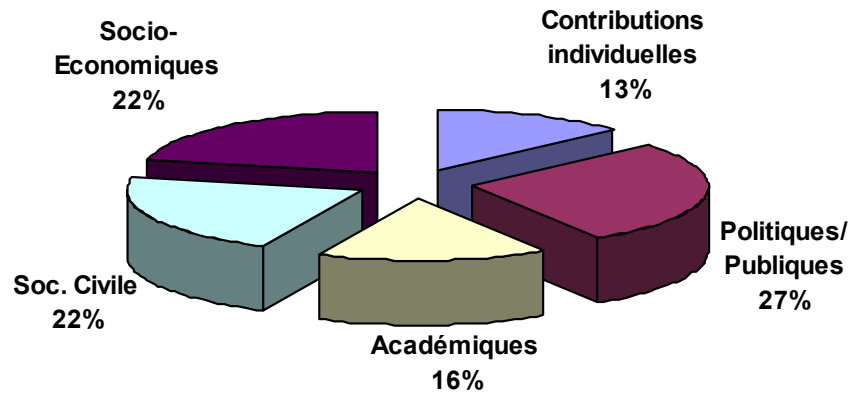
**Graphique 1: Contributions au Livre Blanc - répartition par source (total: 260)**



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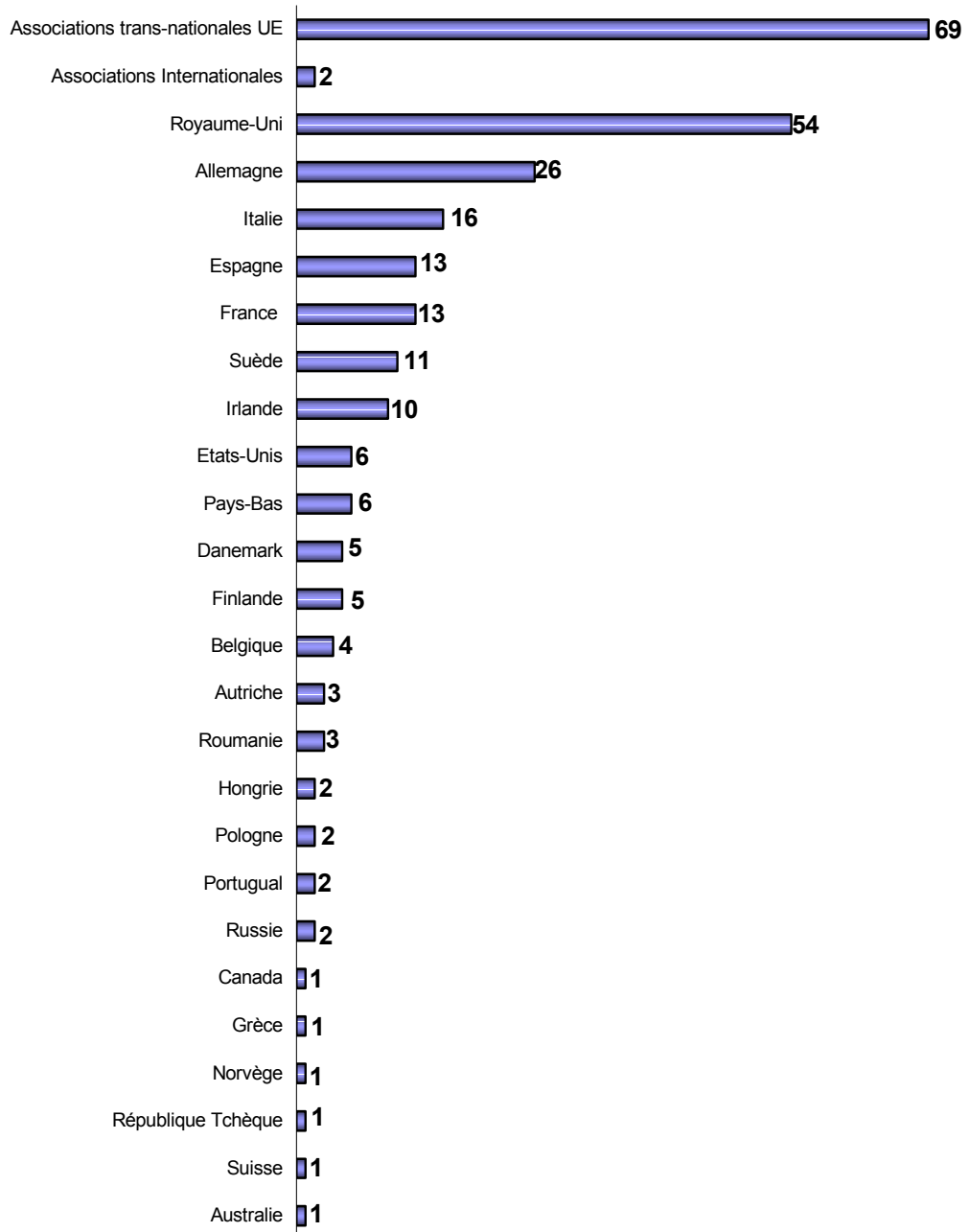
<sup>1</sup> For the purpose of the present analysis, the *civil society category* comprises NGO's, citizens' associations, consumer organisations, environmental groups, cultural groups, voluntary associations, churches, etc., while the *socio-economic category* comprises the social partners ('industry' and 'labour'), professional organisations, public and private enterprises, chambers of commerce. The *public/political category* comprises public entities: predominantly regions, localities & towns, but also associations of regions and localities as well as Member States, while the *academic category* comprises both university contributions as well as individual academic contributions.

**Graphique 2: Contributions au Livre Blanc - répartition par source (%)**

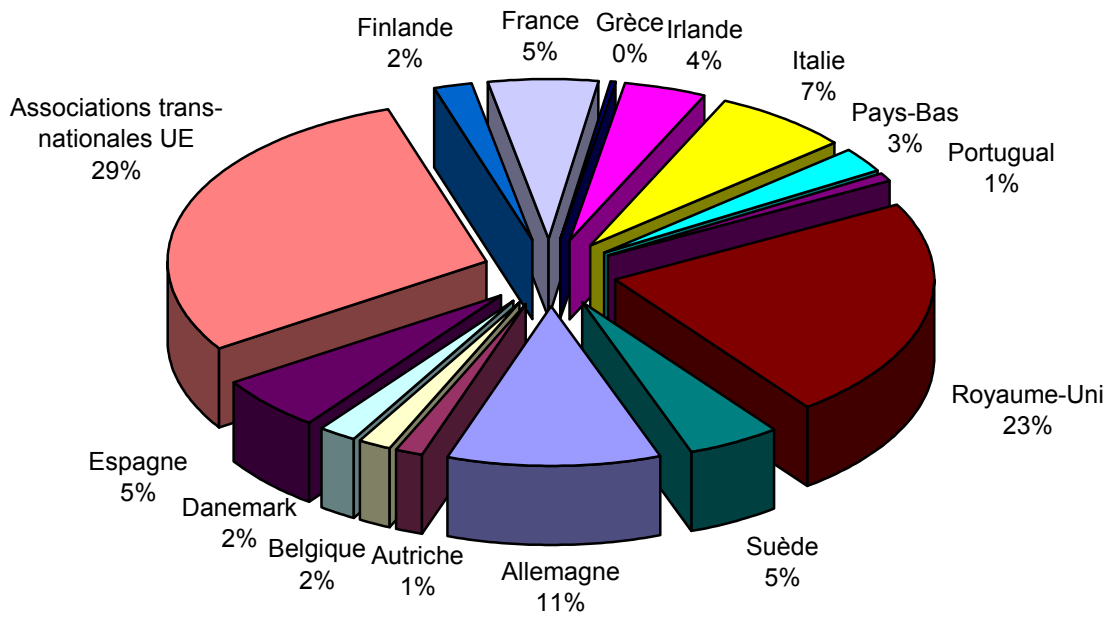


3 - The geographical spread of the response has been more uneven. Apart from the **transnational response (29%)**, **replies from the UK (23%)** have been predominant. Replies from other Member States account for anything between 0% and 11%, while the response from non-Member States account for 8%. (See tables 3 & 4)

**Graphique 3: Contributions au Livre Blanc - Répartition par pays**



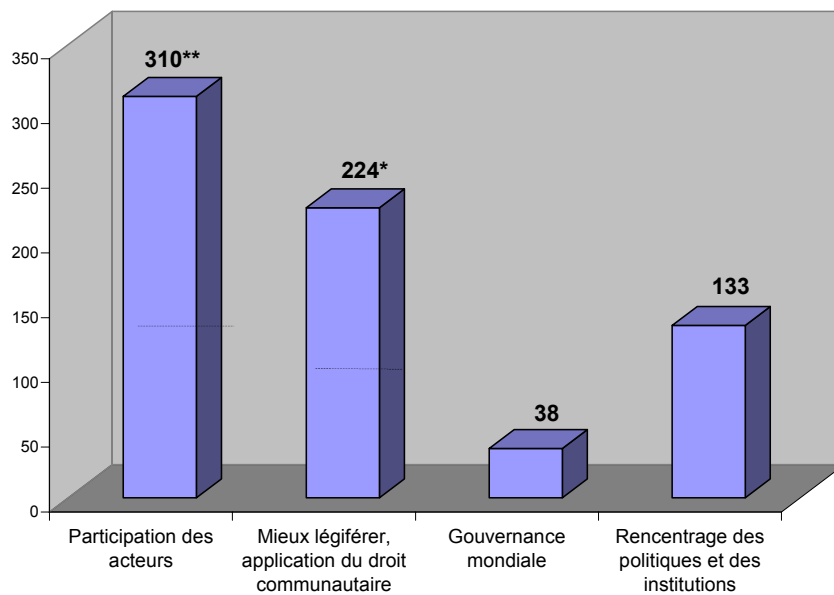
**Graphique 4: Contributions au Livre Blanc - répartition par Etat membre (%)**



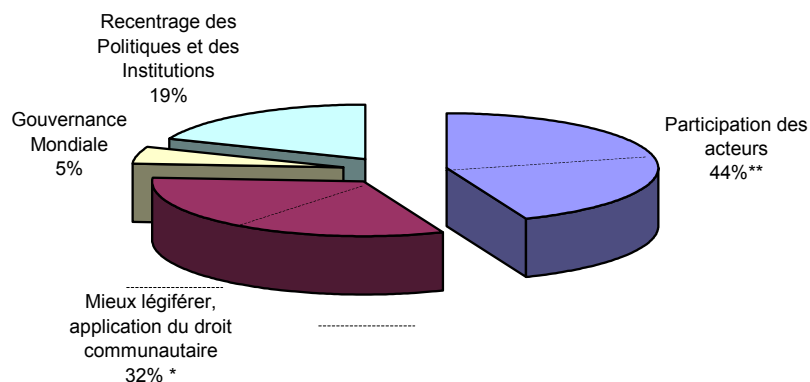
4 - Seven Member State governments (D, DK, FI, FR, NL, S, and UK) have submitted written comments, next to which the European Parliament, the Economic and Social Committee and the Committee of the Regions have forwarded opinions.

5 - With regard to the White Paper proposals for change, the **“better involvement” theme drew 44% of comments**, while the **“better policies, regulation and delivery” theme drew 32% of comments**. 19% of reactions addressed the issue of “refocusing policies and institutions” and 5% addressed the issue of “EU contributions to global governance”.<sup>2</sup> (See tables 5 & 6)

**Graphique 5: Contributions au Livre Blanc**  
**Répartition des commentaires par thème (total)**



**Graphique 6: Contributions au Livre Blanc**  
**Répartition par thèmes (%)**



\* dont la moitié se réfère à l'aspect "mieux réglementer"

\*\* dont la moitié se réfère à l'aspect "consultation"

\* dont la moitié se réfère à l'aspect "mieux réglementer"

\*\* dont la moitié se réfère à l'aspect "consultation"

<sup>2</sup> A majority of the 260 contributions have contained several comments on one or more issues making up the major White Paper themes.

6 - Within the “better involvement” theme, almost **half of all comments (48%) relate to consulting civil society, while about a quarter of observations (26%) relate to the dialogue with regional and local actors.** Within the “better policies, regulation and delivery” theme, it is the issue of **better regulation that has drawn the majority of comments (49%).** Some themes have drawn a cross-constituency response, other themes have triggered a predominantly constituency response.  
(See table 7)

<b>Graphique 7: Contributions au Livre Blanc - répartition détaillée des commentaires par source sur les thèmes abordés dans le Livre Blanc (total 705 commentaires)</b>								
	Contrib. Individuelles	Contrib. politiques	Contrib. Académiques	Contrib. socio-éco.	Contrib. Soc.civile	Total		
<b>Participation des acteurs</b>							<b>310</b>	<b>100%</b>
Consultation	13	38	21	38	38	148	48%	
Dialogues acteurs locaux	4	57	6	7	6	80	26%	
Contrats par objectifs	2	31	3	4	1	41		
Réseaux	0	7	1	7	1	16		
Accords de partenariat	0	10	3	6	6	25		
<b>Mieux légiférer, application du droit communautaire</b>							<b>224</b>	<b>100%</b>
Mieux réglementer	4	40	17	30	19	110	49%	
Analyse d'impact	0	5	1	10	4	20		
Expertise	1	9	4	11	10	35		
Agences	5	12	5	9	5	36		
Jumelage	0	5	1	2	0	8		
Violation droit communautaire / plaintes	1	1	2	3	8	15		
<b>Gouvernance mondiale</b>							<b>38</b>	
Dialogue acteurs pays tiers / Nouveaux instruments	3	11	2	14	8	38		
<b>Recentrage des politiques et des institutions</b>							<b>133</b>	
Recentrage des Politiques	4	11	9	8	12	44		
Recentrage des Institutions	9	23	17	11	11	71		
Comitologie	2	7	4	2	3	18		

## 1.2. The reception

7 - The Commission’s **initiative** to publish a White Paper on European Governance has been **positively received** by an overwhelming majority of contributors.

Many have qualified the initiative as necessary and timely. Only a very small number of contributors have questioned the timing of the Commission’s

initiative against the background of the forthcoming Intergovernmental Conference.

8 - The proposed **orientations** in the Governance White Paper have received a **mixed reception**.

Important strands in the response have argued that the analysis and orientations, as well as the issues omitted are reflective of a vision that is defined by the **institutional self-interest of the Commission and the role of the executive**. Some contributors have argued that if the White Paper is to be commended as an attempt to address the issue of low citizen participation and involvement within the EU, the solutions proposed are largely inadequate and the causes of the difficulties barely considered. This part of the response has argued against the White Paper's "new governance" agenda that focuses exclusively on effectiveness and efficiency of the decision-making system. The perceived White Paper 'short cut' of equating the governance debate with the democratic deficit debate has sparked off a significant strand of contributions on **democratic legitimacy** either in relation to the Institutions (cf. community method, politisation of the EU) or in relation to some of the White Paper orientations (cf. consultation, co-regulation).

Another part of the response has voiced support for a (re) focussing on core functions and a task-oriented Commission, while a significant "constituency" strand in the response has indicated a **willingness to engage with regard to a number of White Paper recommendations**. This is in particular the case with regard to consultation and participation in EU policy-shaping, where the response reflects a strong demand from organised civil society and from regional and local actors for concrete Commission action.

9 - The **format and approach** of the White Paper have been viewed as technocratic by many contributors. The delimitation of the White Paper's governance scope to *reform under the existing treaties* has been taken up by mainly institutional and academic contributors. Most of the **response** has remained **unconcerned about a distinction between existing and reformed treaties**.

Other contributions have argued that the **policy process** (steering tools and decision-making mechanisms) is only **one side of the governance coin** – the **other side** being **EU policy itself**. These contributors have regretted the abstraction made in the White Paper and expected a Governance White Paper to also address enlargement, economic and monetary union (EMU), external policy, or still, the Commission's administrative reform.

10 - The White Paper's definition of the principles underlying **EU governance** has drawn across the board comments. A majority of contributors have agreed that the White Paper identified principles of **openness, participation, accountability, effectiveness and coherence** constitute principles of good governance. A number of these contributors have proposed additional principles like citizens' rights or gender equality.



Others contributions have remarked on the absence of democratic legitimacy as a principle or have commented on the White Paper's definition of accountability<sup>3</sup> as bearing little or no relation to the types of accountability recognised within national, democratic systems of government. This part of the response has referred to *democratic accountability, political & administrative accountability, and also financial accountability*.

Many contributors have raised **subsidiarity** as a key governance principle in the EU as in any multi-level system.

## **2. FROM MORE OPENNESS TO A WIDER PARTICIPATION IN EU POLICY-SHAPING**

### **2.1 Information, a prior requirement**

11 - Many contributors have argued that prior to a better involvement from citizens, there is a need for more and better information on and from the EU Institutions. The access to documents regulation (EC 2001/1049) is generally welcomed, with some contributors arguing for its scope to be extended beyond the European Parliament, Commission and Council. (cf. change to Article 255 TEC). But **access to documents does not, in itself, constitute information on the EU decision-making process**. A major effort to inform citizens is needed and would help combat alienation and improve participation.

12 - Most contributors arguing the need of a comprehensive information policy, in addition request an ensured **equal access to information** (cf. cultural divides, disadvantaged groups). Information is to be made available and communicated through diverse channels (other than the Internet exclusively) and without discrimination between languages. Some contributors have argued in favour of making it a treaty obligation upon the Institutions (Commission) to inform citizens.

13 - The development of **EUR-Lex** as a single on-line point where people can follow policy proposals through the decision-making process drew relatively few comments. The initiative is **welcomed** by contributors if - on the basis of present practice - the access point is **found wanting as regards user-friendliness or completeness**.

### **2.2 The nature of better involvement**

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<sup>3</sup> *Accountability. Roles in the legislative and executive processes need to be clearer. Each of the EU institutions must explain and take responsibility for what it does in Europe. But there is also a need for greater clarity and responsibility from Member States and all those involved in developing and implementing EU policy at whatever level.* European Governance – A White Paper, page 17

14 - Ensuring more openness, better involvement and participation is widely welcomed by contributors. A majority strand in the White Paper response sees openness towards civil society as a means of reinforcing accountability and therefore giving strength and vitality to the EU institutions. These contributions **separate quite clearly an increased openness from an increased democratic legitimacy** of the EU and its institutions.

15 - For large sections of the response, it is imperative that **consultation and involvement of civil society should not undercut representative systems**. A majority of the White Paper response sees the involvement of civil society in the policy shaping stages, not in decision-making or implementation. Only a very small number of contributors have argued for direct participation in decision-making as a right (to be enshrined in the treaty).

16 - Some contributors have argued that there need **not necessarily be a conflict between moves towards greater ‘participatory’ democracy and ‘representative’ democracy** at the EU level, but regret that the White Paper has offered no orientations as to **how to govern such a complementarity at the EU-level**. (cf. links between governance and the institutional process). In a similar vein, some contributions have pointed out that democratically legitimated governments and national parliaments are not included in the list of actors whom the Commission proposes to involve in the preparation of its (legislative) policies, while another omission concerns political parties which, throughout the White Paper, remain unmentioned.

17 – Some respondents have pointed to **perverse effects of ill-defined involvement** whereby the nature of involvement is only vaguely identified and so widely diffused that no control can be exercised over the public authority (Commission) charged with the exercise. This authority then unduly gains in discretion and concentration of power while purporting to diffuse it.

Other contributors have stressed the **level playing field principle** between the involvement of smaller and larger actors, of EU actors and non EU actors.

### **2.3. Differentiating the involvement of different actors**

18 - If a smaller strand of opinion regrets the division into diverse “consultative constituencies” (cf. civil society, social partners, regional & local actors), the majority response to the White Paper have argued the need to **distinguish between the involvement of representative bodies and that of civil society**. .

19 - At an *EU institutional level*, the European Parliament and some Member States’ governments have argued that civil society cannot be regarded as having its own democratic legitimacy, given that its representatives are not elected by the people and therefore cannot be voted out by the people. The European Parliament has advanced that **the natural mouthpiece for EU civil society is**, by definition and in accordance with its newly formulated role under Article 257 of the Treaty of Nice, **the Economic and Social Committee**. The Social and Economic Committee has advisory status and, as the law stands,

may also be consulted by the Council and Commission in all cases in which they consider it is appropriate. An **early consultation of the Social and Economic Committee** by the Commission can, in the view of the European Parliament, be seen as **a way of increasing participatory democracy at the EU level**. The European Parliament also argues that however indispensable it may be to consult relevant groups and experts when drafting legislative proposals in particular, the Commission should refrain from developing a further layer of bureaucracy in the form of more extensive partnership arrangements with civil society actors (cf. “accredited organisations”). Instead, the European Parliament favours that **an interinstitutional agreement on democratic consultation** be concluded, committing all three institutions to commonly agreed consultation standards and practices at EU level.

20 - Within mainly the *socio-economic response* to the White Paper, contributors have argued the need of maintaining a clear **distinction between social dialogue and civil dialogue**. Contributors refer to the special, recognised status of the social dialogue at the EU level. The social partners have a treaty-based role and responsibilities in the social field that cannot be generalised to other policy areas and actors.

21 - Important strands of *sub-national public authorities* have also argued to **distinguish between the involvement of elected regional and local representatives and civil society**. Contributors point to the increasingly important implementing responsibilities at the regional and local level and look towards an involvement beyond open policy-shaping consultation processes. Some sub-national authorities point out that at the regional/local level, they already draw on (incorporate) the experience of the business community, the trade unions, NGO’s, voluntary sector and civil society.

#### **2.4 Civil society - issues of representativity and responsibility**

22 - A number of contributors have argued that when seeking to involve civil society, the most appropriate starting point is an analysis of the deficiencies of the present EU system: the **unbalanced representation of societal interests, the insecurity about the “representativity” yardstick and the selectivity in the interaction between the EU institutions and interest representatives**. The subsequent step would then be an analysis of “remedial” strategies.

The White Paper is credited for having recognised present deficiencies. Its remedial action, i.e. its commitment to establish **minimum standards and a code of conduct** setting out on what, when, whom and how to consult, **has drawn a substantive across-constituency response**.

23 – A large majority of contributors have **welcomed the commitment towards a more transparent system of consultations** and represented interests at the EU level. Some contributors have regretted the **lack of concrete proposals** with regard to a code of conduct on consultation in the White Paper, while other contributors have requested clarifications as to a future link with the Commission’s civil society organisations database. Some contributors have

advanced ideas on applied arrangements (cf. minimum delays for consultations) and have requested clarity on how comments would be taken into account.

24 - A majority in the White Paper response is apprehensive as to whether better involvement should be linked with greater responsibility and accountability for civil society actors. There is **broad opposition towards the EU Institutions seeking to influence and enhance the internal structures of civil society organisations**. While the exercise of public power must be conducted according to principles associated with a normativised public sphere of decision-making, contributors question the notion of applying such principles to civil society itself. The White Paper emphasis upon the duties of civil society actors is contested on several grounds. Strands within the academic response reject the imposition of “good governance” principles upon civil society on the basis of *democratic theory* (cf. the reversal of the assignment of principal agent roles). In a similar vein, a number of public authorities indicate from a *public-institutional* perspective that the internal workings of civil society organisations are beyond governance. This stance is equally supported by a number of civil society respondents who contest on grounds of *equal treatment* that civil society should follow the principles of “good governance”. They argue that if civil society is asked to provide proof of openness and accountability, the same must be requested from both sides of industry and any other organisation.

25 - Among the **small minority** that accepts and supports the imposition of “good governance” principles upon civil society actors, some contributors **have put forward criteria of representativeness**. From an *EU institutional point of view*, the Economic and Social Committee has argued that ‘eligible’ partners are organisations that must represent interests that tally with the interests of European society, exist permanently at Community level, provide direct access to its members’ expertise, comprise bodies that are recognised at Member State level, have member organisations in most EU Member States, provide for accountability to its members, have authority to represent and act at the European level, be independent and mandatory, be transparent as to its decision-making structures and financing. Other contributors have pointed to the difficulties associated with the policing of “good governance” criteria with civil society organisations.

26 - The **multi-level nature of European civil society** with its **wider challenges as to representativeness** is taken up by both the academic response and part of the civil society response. The promise of a concept of European civil society is that it may help to bridge the gap between society and the structures of EU governance in a way that is superior to two alternatives: the granting of direct rights or the strengthening of national constitutional legitimacy of transnational governance. Some contributors have in this respect pointed to the difference in seeking to bridge the gap between society and the EU through domestic civil society actors and seeking to bridge the gap through transnational structures which have become autonomous and claim their authority in terms of their transnational functionality. These contributions have stressed the **dangers of a dynamic erosion of legitimating and**

**‘participatory’ domestic structures in favour of a new transnational constituency of voices.** At a more applied level such risks are put forward in a number of contributions by national civil society actors and individual citizens. These argue that by concentrating on transnational structures *only*, citizens may be left feeling even more remote as their domestic organisations are bypassed.

27 - Further questions of representativeness were raised by some contributors pointing to the experience that openness attracts greater involvement from organised interests with distinctive or strongly held views, but without necessarily confirmed support of a wider public. Along similar lines, some contributors have argued that **consultative processes tend to centralise and favour the more powerful vested interests by comparison to the more scattered public interests.** Within this framework, some contributors have argued that the responsibility of whether all interested parties have been identified and how public concerns not represented or under-represented are to be addressed must lay with the public authority. **Representativeness needs to be ensured by the Commission who is to be responsible that the full range of views has been canvassed and represented.**

## **2.6 Sub-national public authorities - constitutional constraints and issues of diversity**

28 - The White Paper proposals with regard to a **better involvement of the regional and local level** in both policy-shaping and policy implementation have drawn many constituency comments, which have concentrated on Commission commitments rather than national practice. The response shows a split between a **critical reception** of the White Paper proposals **by responding national governments** and **positive demands from regions and localities themselves.**

29 - At an *EU institutional level*, the *European Parliament* has advanced that there can be no direct delegation of tasks or powers to regional and local authorities in the Member States, as this would undermine the institutional structure of the EU and be in breach of the principles of subsidiarity and proportionality. Welcoming the White Paper’s concept of the role of the regions as intermediary between the citizen and the EU, the European Parliament on the other hand has pronounced itself **in favour of a treaty change (Article 5), in order to make a specific reference to the function of constitutional regions.** It has also proposed that regions and local authorities be invited to involve themselves much more in the consultative (pre-legislative) phase as well as in a (post-legislative) monitoring of impacts on the ground. The development of a dialogue with European and national associations of regional and local authorities should thus result in the regional and local level being consulted on all initiatives that affect their interests. Target-based tripartite contracts as a way of ensuring a more flexible implementation of policies have been advanced as an interesting and new approach to implementing Community law, the effects of which on Member States’ laws and on the structures of local government must be carefully studied.

30 - The *Committee of the Regions* has queried how the Commission intends to establish a systematic dialogue with regional and local government *through* national and European associations while respecting national constitutional and administrative arrangements. The Committee on the other hand has welcomed target-based, tripartite contracts, which are to be developed as an effective instrument for involving regional and local authorities in the implementation of those Community policies, which most directly affect them.

31 - A **majority** strand in the predominantly **constituency response welcomes** - despite constitutional constraints - the White Paper commitment towards a **more systematic dialogue** with regional and local authorities. A significant strand of contributors has however argued for a permanent and structured dialogue to take place with the regions or localities **directly**, rather than through European and national associations of regional and local government.<sup>4</sup>. **Target-based, tripartite contracts** between Commission, Member State and interested region with an aim to ensure a more flexible implementation of EU policies have also been positively received by a majority constituency strand, if **additional clarifications are requested** as to how these would operate.

32 - Within the constituency response, comments from **constitutional regions have been more guarded**. Some have tended to argue that a systematic dialogue through European or national organisations of regional and local government will necessarily resolve around lowest common denominators, while with regard to target-based, tripartite contracts some have advanced that it cannot be the aim to “re-negotiate” on constitutional competence.

33 - Overall, an important number of contributors have argued that, in the present EU institutional set-up, there is limited scope to increase a direct involvement of regional and local actors, and have put forward the concept of “**vertical subsidiarity**” to be enshrined in a new treaty. Some contributors have argued that a special treaty status for constitutional regions only would install further inequality between regions.

34 – Member State governments have reiterated that solely **national authorities are competent institutional actors within the EU**, with some Member States commenting that the White Paper proposals seeking to **directly involve sub-national authorities in EU decision-making is contradictory to the respect of the internal organisation of Member States**. It is reiterated the treaty organises solely the relations between the national authorities and the European institutions. Consequently, any policy-shaping or policy implementation powers residing directly with sub-national authorities would raise the issue of the responsibility of the Institutions. Some Member State governments have commented that the Commission’s proposal to introduce **target-based, tripartite contracts** would lead to a situation where the Commission has a direct say in the execution of legislation by a sub-national

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<sup>4</sup> The Commission’s communication with regard to a direct dialogue with sub-national authorities has at times gone beyond the factual commitments in the White Paper – cited especially by contributors is the President’s article published in a number of national newspapers on the eve of the adoption of the Governance White Paper.

authority. This would constitute an **unacceptable encroachment on the Member States' executive powers.**

35 - While asserting that only national authorities have decision-making responsibility at EU level, some Member State governments have also been **requesting clarifications** from the Commission. With regard to target-based, tripartite contracts, they have argued that such arrangements would have to **respect existing internal constitutional arrangements.** Equally, **no new decision-making bodies should be created** and target-based, tripartite pilots should **not infringe upon the right to maintain a higher level of protection** or **distort the level playing field by allowing a relaxation of rules** in some regions of the EU.

36 - Constituency comments on the role of the **Committee of the Regions** have been divergent. Some contributors have argued for an **enhanced status** for the Committee of the Regions (cf. the right to a reply from Council), while other contributors have remained **sceptical as to whether the Committee of the Regions can better represent "regions" or act more pro-actively** without a large-scale institutional overhaul. The **Committee of the Regions** itself has argued for a stronger role in the decision-making process. While accepting that it will have to reform its structures and working procedures to fulfil its representational function effectively, it **has argued that it should be given the means to play a more proactive role in determining policy.** The Committee has also demanded that a territorial cohesion policy be included in the treaties a responsibility to be shared by the EU, the Member States and regional and local authorities

37 – Generally, contributors have argued that the Commission will need to **recognise that there is an enormous variation across the EU in the forms and degrees of involvement at sub-national levels.** Some contributions have argued that the Commission, in seeking to involve sub-national levels, will need to be both practical in its proposals and imaginative in its encouragement of local and regional developments. Concrete proposals advanced in this respect are for the Commission to develop practical initiatives that serve to increase multi-level awareness and to seek to develop initiatives that require a regional and local expression of views in order to achieve full policy formulation and implementation.

## **2.7 Making concrete the White Paper commitments on better involvement**

37 - A number of contributors have highlighted the **resource implications** of policies of openness and participation, and have raised the question of what would happen if the Commission's invitations were to be taken up by most, or even may of the civil society actors across Europe. Some contributors have pointed out that consultation is time consuming and can be expensive while consultation with civil society in particular can be complex and untidy. The fact that the White Paper has neither put forward nor anticipated any

operational or budgetary consequences of a generalised consultation policy has led a sceptical strand of contributors to question the seriousness of the Commission's proposals.

38 - In a similar vein, some institutional contributors have indicated that the Commission should act by **management standards** that necessarily include **approved and adequate resources to fulfil** all stages of **policy commitments**.

### **3. TOWARDS BETTER EU POLICY AND LAWMAKING**

#### **3.1 *Better policies and regulation: institutional primacy - efficiency trade off***

39 - A majority of contributors has voiced endorsement for the Commission's intention to improve the quality of regulation and simplify Community lawmaking. **A broadening of the range of EU policy instruments and an increased use of non-legislative instruments has been supported by a significant strand** in the White Paper response.

40 - Within primarily the *socio-economic response* to the White Paper, many contributors have argued the need for a quicker, more flexible legislative process. They have advanced that **alternative regulatory models and non-legislative instruments have often proved to be more efficient and effective than traditional legislation**. A significant strand has advanced that legislation should only be used if there is not a better alternative and have argued for a focussing on outcomes rather than on prescribed means or conditions under which to achieve goals.

41 - Other contributors have argued that **improved efficiency cannot justify a transfer of decision-making competence to interested parties who will not be responsible for political consequences** and who cannot claim democratic representativity or legitimacy. Some contributors have argued that new forms of regulation are still ill defined and do not *a priori* offer the same guarantees. Other contributors have in this respect also raised the question as to whom exactly is meant by the White Paper's definition of 'interested parties', considered as potential partners in policy-making (cf. co-regulation).

#### **3.2 *Combining policy instruments for better results***

42 - The **choice of policy instruments** has drawn a fair amount of cross constituency and diverging contributions. Some contributions have argued for **clarity** as to the areas in which regulations or framework directives would be the appropriate instrument. Other contributions have argued for the choice of instrument to be decided on a **case by case basis**.

43 - The White Paper commitment to publish **guidelines on the Commission's use of expertise** has drawn a modest but **welcoming response**. Contributors have argued the need for a sound scientific underpinning of policy proposals



and have stressed the importance of independent and identifiable expert advice by the EU. In a similar vein, contributors have advanced that **ex-ante impact assessments** will contribute to the balance and quality of decision-making.

#### *Co-regulation*

44 - An important strand in the response has argued in favour of **assessing policy instruments on an equal footing**. Some contributors, in this context, have argued against the White Paper's **narrow focus on co-regulation as an alternative to traditional legislation**. Contributors have advanced self-regulation and voluntary agreements as other alternatives to be considered, and have pointed to examples of already established voluntary agreements and codes of conduct in a number of fields at the EU level.

Some contributors have argued that **any new form of regulation must in any event be introduced only as part of an endeavour to simplify or streamline regulation**.

45 - From an *EU institutional* point, the European Parliament has argued that recourse to co-regulation will require a further examination by Parliament and should possibly be regulated by an interinstitutional agreement. Co-regulation should in no circumstances lead to targets for industry being fixed in a way that circumvents the EP and are merely approved by the Council as 'agreements between the Commission and industry'. The EP has argued that such approaches would be neither representative nor accountable.

#### *Open method of co-ordination*

46 - With regard to the **open method of co-ordination**, the response is reflecting cross constituency **divergences of opinion**. One strand of contributions has explicitly subscribed to the White Paper orientation that the open method of co-ordination is **to complement and not substitute for Community action**. Contributors have argued that the open method of co-ordination should not be used as a replacement for regulation in areas where competence lies with the EU, nor should it dilute the political responsibility of the EU institutions.

Another strand of contributions has argued that the method should **remain restricted to the exchange of best practice, benchmarking and peer review**. It should not lead to a creeping extension of the EU jurisdiction by the instigation of "parallel" legislation in the Member States, based not on formal EU competence but on informal co-ordination. Other contributions, supporting a constraint use of the open method of co-ordination, have advanced the need for a better involvement of the European Parliament, national parliaments and social partners in the method.

47 - Other contributions have expressed themselves in favour of **extending the open method of co-ordination**. Contributors have argued the method to be an exponent of the mixed nature of government within the EU. They point to the **opportunities the method offers as to multilevel governance, intertwining**

**different EU institutional levels** (European Council, Council, Commission) **with the national level** and allowing for new balances between *bottom-up pressure* and *top-down co-ordination*. The open method of co-ordination is argued to reinforce national governments in their domestic co-ordinating role, while it enhances the Commission in its political co-ordinating role vis-à-vis Council formations and the European Council. The open method of co-ordination, it is argued, could also have potential as an implementation process.

Supporters of an EU approach restricted to an exchange of best practice, benchmarking and peer review have argued the open method of co-ordination to be, intrinsically, applicable to a wide range of EU policy areas.

48 - Some singular *institutional and socio-economic respondents* have argued that, before multiplying the open method, its **organisational demands** should be **reflected on** and an **objective evaluation of experience** should be made.

### **3.3 Centralisation and decentralisation: executive functions and agencies**

#### *Comitology*

49 - The White Paper proposal to review the conditions under which the Commission exercises its executive competence has drawn comments from the institutional and academic constituencies only. The majority of contributors has voiced **opposition to abolishing regulatory and management committees** and retaining only advisory committees.

50 - While it has been noted that the White Paper gives no indication as to the mechanisms that would replace the Council's control over the Commission's executive competence, contributors have argued that an abolishment of regulatory and management committees would amount to the **replacement of consensus-seeking procedures with perceived unchecked powers of the Commission**.

51 - A large majority strand of contributors has argued against this White Paper orientation implying a **shift in institutional balance** as regards delegated legislative (implementing) competence. The shift is opposed as resulting in a **reduced democratic legitimacy** of decisions taken.

52 - Some contributions have argued that comitology committees are uniquely effective in reaching consensus in complex questions of implementation and in managing routine applications of Community legislation. Other respondents have stressed the **large volume of issues resolved through comitology committees** against a wider background of ongoing reform of legislative frameworks. They point to the open method of co-ordination, regulatory agencies and co-regulation as possible instruments in implementation.

53 - From a *Member State point of view*, some governments have declared the White Paper proposal to review the Commission's implementing powers to be **beyond the governance scope**. They consider that it would require changes in

the treaty and thus **pre-empts the outcome of an Intergovernmental Conference**. A few Member State governments have declared to support a **review of the workings of committees in budgetary terms**, with an aim to achieve simpler, more accessible and more cost-effective procedures. This should in no way curtail the ability of Member States to oversee the Commission's work. The *European Parliament* has argued that any forthcoming proposals should put **Council and European Parliament on an equal footing as regards controlling the Commission's exercise of its implementing role**.

54 - A small minority of contributors have argued in support of the "new approach" agreed in the case of the adoption of the financial services legislation. Some contributors have proposed to examine the usefulness of the new model for other areas.

### *Regulatory agencies*

55 - The White Paper commitment to examine and bring forward criteria for the establishment of EU regulatory agencies has drawn some across the board comments. A majority strand in the White Paper response has expressed **reservations as to the creation of regulatory agencies at the EU level**. Some contributors have pointed to the fact that the treaty confers powers of administration on the EU in only a few areas in which Community administration is seen as the only effective means of implementation. It is argued that there is **a case to be answered as to whether there is work to be done at the EU level**. Other contributors have raised the **issue of transparency and democratic control**. Some have questioned the added value of 'additional' intervening layers and have pointed to the risk of even less comprehensible decision-taking in the eyes of citizens. Other comments have raised the question of legal redress with regard to agency decisions.

56 - From an *EU institutional* point of view, the European Parliament has argued that the creation of further autonomous regulatory authorities should **only be approved if specific scientific or technical expertise is required and a decentralised administration seems appropriate**. However, this must not lead to a reduction in expert and judicial scrutiny by the Commission or to any watering down of the Commission's political authority. The necessary resources for autonomous regulatory authorities must be ensured, they must have a clear legal basis, be accountable to Parliament and their creation **must not lead to the EU acquiring jurisdiction in new areas**. The latter argument is also taken up in the comments from some Member State governments, of which some argue that EU agencies should **not be considered in domains in which most Member States have delegated powers to national agencies**.

57 - Within the **small minority** that accepts and supports the idea of the EU creating (new) regulatory agencies, some **have stressed the important role of such agencies in ensuring an efficient functioning of markets and guaranteeing of standards**, while others have pointed to the need of clear demarcation lines as to responsibilities and mutual relationships between such agencies.

### **3.4 The respect of Community law**

58 - The proposed establishment of **priority criteria for the investigation of breaches in Community law** drew relatively few comments. In general terms, contributors have argued that the main **challenge in transposition and infringements lies with the forthcoming enlargement**. Important sections in the *socio-economic* response have stressed the need to a strict infringement policy and practice.

59 - If the Commission's commitment to publish a **code explaining how complaints are handled** is **welcomed**, contributions from civil society organisations and individual citizens have tended to voice concern. They argue that there is no case to delegate or decentralise such a core function of the Commission and stress the difficulties of a lack of awareness of EU law among the legal profession and the danger of conflicting judgements undermining the uniform application of EU law are stressed. The direct **concern** is that **complaints from individuals could take second place to those of large companies**.

## **4. ON DEMOCRATIC, EFFICIENT INSTITUTIONS AND EUROPEAN POLICY GOALS**

### **4.1 The Community method**

60 - The White Paper's adherence to the Community method together with a **proposed enlarged role for the Commission** has drawn a substantive *academic* response. Some contributions have questioned the White Paper proposal to focus the legislative role of the European Parliament and the Council to the definition of essential principles, while leaving technical detail and implementation to the Commission. These contributors have **questioned whether the exercise of executive powers can be presented as technical and neutral**. They have argued that many policy choices below the level of "*essential principles*" remain highly political, especially given the diversity of economic conditions, political cultures, institutional structures, policy traditions and national sensitivities within the EU. Contributors have pointed to the present search of consensual solutions that avoid national sensitivities or incompatibilities in both the preparatory phase before a Council (and Parliament) decision as well as in the implementation phase.

In a similar vein such contributions have questioned the White Paper proposal for Council to **vote as soon as qualified majority seems possible**, rather than pursuing discussions in the search for unanimity. Issues thus decided but touching upon political sensitivities of national constituencies would, it is argued, gravely **damage the Community method**. Contributors have also pointed to risks for the Community method by the White Paper commitment to **withdraw proposals "undermined" by interinstitutional bargaining**. In a

framework where the Commission maintains the monopoly of initiative, some contributors have **warned against confrontational strategies**, which can be played by all parties: the Commission's threat to withdraw 'undermined' proposals could be matched by a Council rejection of all Commission initiatives which, in their original form, do not respond to the objections and demands that would otherwise result from consensus-seeking negotiations.

61 – As an alternative to the Community method, the issue of a **politised Commission** has been advanced in some academic responses. Contributors have qualified the **Community method** as **consensus-oriented decision-making** based on the elaboration of compromise *before* political discussion. They have stressed that the latter works as a disincentive for political deliberation.

Arguments advanced in favour of a politisation of the Commission go back on research indicating that the institutional clarity of a political system encourages participation while the polarity of a party system plays an important role in the mobilisation of citizens. Contributors have argued that the aim of the White Paper, i.e. to clarify the framework of EU deliberation, would support a strategy of politisation. Accepting however that a majoritarian model would not be suitable to the present structure and state of development of the EU, some contributions have argued in favour of an **alternative approach**.

Such an alternative deliberation would have the Commission constituted by a large coalition of European parties, thereby preserving its power to initiate and execute policies, even in the absence of a fixed majority in the European Parliament or in Council. Issues would be clarified by a **Commission presenting its programme, a given policy or even a given decision by explaining the different possible options and their ideological roots**, rather than defining a ready-made compromise. In doing so, the Commission could preserve its "neutral" profile as a collegial body. Its role would be to identify different possible options based on different ideological assumptions, and to explain them in order to stimulate and structure deliberations.

#### **4.2 Refocusing policies and institutions**

62 –There is **broad support** for the White Paper message that there is a need **for ensuring policy coherence and a more clear identification of objectives**. Clarification of the roles and responsibilities of the separate EU institutions is also seen as a central measure in avoiding unnecessary bureaucracy.

An important strand of opinion has held that the **goals and competencies of the EU need to be spelled out** through a basic binding text which specifies the distribution of responsibilities between the vertical and horizontal institutions and levels, between the decision-making bodies of the EU on the one hand, and between the Member States and sub-national regions on the other. Such contributions have held that **institutional solutions rather than the White Paper's functional solutions are needed**. The White Paper's mere "repackaging" of the subsidiarity and proportionality principle is argued not to

be a sustainable solution, with contributors warning against Member States (with the backing of their constitutional or highest courts) arrogating the task to themselves.

A **minority strand** of contributors has argued against attempting to delineate areas of competence that are exclusive to Member State or the EU level, or even sub-national levels. They **have argued for an abandoning of hierarchical layers of competence based on the subsidiarity principle**, and have pronounced themselves in favour of non-hierarchical networking arrangements, with all levels of governance shaping, proposing, implementing and monitoring policy jointly.

### **4.3 EU governance, global governance and the future of the Union**

63 – A substantive strand of contributions has argued that the White Paper **principles of good governance should not be equated with democratic government**, and have argued that better governance is not the answer to a democratic deficit problem<sup>5</sup>. From an *EU institutional* point, the European Parliament has advanced that the EU Institutions require democratic legitimacy, which presupposes decisions arrived at through representative deliberation. The White Paper's **inclusion of more players** in the policy process, *while necessary*, **does not lead to increased democratic legitimacy** of policies or institutions.

64 – An across the board response has argued that the proposed governance mechanisms seeking to enhance the effectiveness and efficiency of the decision-making system cannot resolve the legitimacy gap of the EU system. Contributions have stressed that **more open institutions**, seeking to involve more players, **will lead to more responsiveness and an increased accountability of institutions**.

Substantive academic contributions on democratic legitimacy have argued that the White Paper orientations are clearly situated in the **new governance agenda** in the sense that governing is no longer exclusively state, that the relationship between state and non-state actors is non-hierarchical and that the key governance function is regulation instead of resource redistribution. In legitimacy terms the concept is argued to be deficient. Other contributions have stressed the distinction between **performance legitimacy, regime legitimacy and polity legitimacy**. They have argued that each dimension is closely related to the other two (including the tensions between them) and that any assessment of the **“legitimacy standing”** of the Union will need to pay attention to all three.

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<sup>5</sup> The Commission's communication on Governance has at times gone beyond the White Paper's factual contents – cited especially by contributors is the President's speech before the Parliament (04.09.2001) “When we speak of governance we are, in fact, discussing democracy. European democracy, how it works, why it doesn't work better and what its prospects are.”

65 - The White Paper orientations as to the **EU's contribution to global governance** have drawn relatively few comments.

Contributions have called for **more precise orientations** on the ways and means that would make it possible to improve the effectiveness and legitimacy of global regulation. Some contributors have referred to the *World Trade Organisation* as the key player in implementing multilateral discipline in trade, and have especially supported a number of reforms tabled by the Commission to improve efficiency, transparency, the taking into account social and environmental aspects in the disputes to be handled, or the improved means of retaliation by entitled parties in order to defer infringements of the rules.

Other contributors have voiced support for a strong political EU to co-ordinate policy and 'speak with one voice' in international fora, but have anticipated that this is perhaps an issue of internal, rather than global governance. Some contributors and notably non-EU contributors have argued for **governance principles** applied by the Commission within the EU, to be **also applicable towards non-EU governments and interested parties**.

66 – The White Paper response looking towards the future of the Union has drawn a rather general response. Decided subsequently to the launch of the White Paper consultation exercise, the establishment of a **Convention** to prepare the next Intergovernmental Conference has met with **unanimous support** from contributors.