

Comments on the Paper “Environmental Governance and the Commission White Paper”[?]

(EEAC Workshop on Governance)

1. Overall Insufficiency to Overcome the Legitimacy Crisis

The basic lines and principles of the White Paper on Governance envisage the reconciliation of Europeans with their democratic institutions as a starting condition for effective and efficient policies.

The core message of the Commission’s White Paper on New Governance is: how to involve stakeholders, civil society and regional and local authorities in the decision making process, from consultation to dialogue through to the final decision.

The background paper considers that these efforts have proved to be insufficient to overcome the legitimacy crisis. This conclusion is based on two main arguments:

- ✍ First, the real hidden agenda of the Commission proposals is to regain lost ground to the European Parliament and national governments in the aftermath of the co-decision procedure. In consequence, the new governance model is a subliminal (and, eventually, a machiavellian) strategy established by the Commission to guarantee a more favorable power equilibrium with the Council and the European Parliament. This political game leads to the underestimation of the key role of Member States and the European Parliament as the only source of democratic legitimacy.
- ✍ It is necessary to distinguish between the organized (and vested) interests represented in Brussels and the genuine values, behaviours, attitudes and priorities of civil society in each member-country.

2. Participation as a Pre-Requisite for Successful Policies

It is clear that any model of governance intertwines with the political options associated to a given system of government. But a model of government does not have to be a “revolution” ! Empirical evidence suggests that many Member Countries and even the European Commission have proceeded to “incremental” improvements in governance without significant reforms at the level of their political and constitutional systems. In other words, we can always conceive a

[?] Portuguese CNADS representatives’ contribution for the Berlin Workshop (SANTOS, Victor; BRAGA, Jaime; LEITÃO, Aristides).

new model of governance as a contribution to improve the effectiveness and efficiency of an established system of government.

Within this context, we believe that the involvement of civil society and regional and local authorities in the decision making process, from consultation to dialogue through to the end decision is a relevant pre-requisite for better policies.

It is almost consensual among political science academics that social capital in the form of generalized confidence and strong civic norms prescribing cooperation in large-scale collective actions settings can improve governmental performance in three major ways. First, it can broaden governmental accountability, so that government must be responsive to citizens at large rather than to narrow interests. Second, it can facilitate agreement where political preferences are polarized. Third, it is associated with greater innovation in policy-making in the face of new challenges.

Holding governments accountable is arguably the most important means by which social capital influences performs. Greater trust and more civic-minded attitudes can improve governmental performance by affecting the level and character of political participation, reducing “rent-seeking” (by vested interests) and enhancing public-interest behaviour.

Raising awareness about environmental policy and sustainable environment is a crucial issue. We should not forget that as much relevant as “how to get the Union closer to people” is to be able to set up a new context suitable to get people and organizations involved in shaping and implementing EU environmental policy. One priority, under the Aarhus Convention, is to provide citizens with more accurate and accessible information, public participation in decision-making and access to justice on environmental matters. Unfortunately, it was long in coming the EU ratification, in spite of ratification deposits by several member-states, with prejudice to the new Public Awareness E.P. and Council Directive (vd. Common Position, CE, n^o41/2002, 25th April)^(*). More widespread information about environment and greater awareness of environmental issues will empower citizens and enhance the democratic process and, on the other hand, enhance the quality and of implementation of decisions and give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns.

We need regulations to force economic agents to adopt more ecologically correct procedures but we also need to explain the reasons behind a given policy so as to make unpopular decisions more acceptable. On the other hand, we should take into consideration that decisions and behaviours are rooted on cultural values and attitudes which are sociologically determined. We have to be able to change our minds in other to guarantee more sustainable performances.

^(*) See §119.ter of the WSSD 2002 Plan of Implementation: “Ensure access, at the national level, to environmental information and judicial and administrative proceedings in environmental matters, as well as public participation in decision-making, so as to further principle 10 of the Rio Declaration on Environment and Development, taking into full account principles 5,7 and 11 of the Declaration”.

The background paper stresses one relevant aspect: we should take into consideration that, at different levels, the involvement of organized interests is not, by itself, a sufficient condition to overcome the democratic deficit. *“A stronger involvement of organized interests however does not necessarily imply stronger popular support. (...) Civil society gathers many divergent interests and those most strongly voiced in Brussels are not necessarily identical to those expressed nationally or regionally. (...) A key criticism is that, the invitation to vested interests to take responsibility in different phases of the policy process, also offers them multiple veto points (!)”*.

But this shortcoming should not be a case for despair but instead an incentive to promote changes and to introduce innovations.

A golden rule for the establishment of a new model of governance should be the idea expressed in the background paper that *“new models of governance should not be considered as an alternative to the traditional legislative process, but as a complementary and especially a subordinated process. The supremacy of democratically legitimated environmental policy must be generally accepted”*.

As many other aspects in political and societal systems, the involvement of civil society is an on-going process, and we have to recognize that, as regards social or environmental governance, the required institutional framework is either absent or badly designed and ineffective. Although both theoretical and empirical contributions to this field are accumulating at an increasing rate and two pioneers of this approach received the Nobel Prize in Economics (Ronald Coase in 1991 and Douglass North in 1993), the impression persists that the field is long on theoretical analysis but short on empirical work.

In conclusion, we think that the following aspects should be stressed and deepened at the Berlin Workshop:

- i) Although we are aware that any model of governance intertwines with the political options associated to a given system of government, we believe that it is possible to proceed to “incremental” improvements in governance without significant reforms at the level of political and constitutional systems. In other words, we can always conceive a new model of governance as a contribution to improve the effectiveness and efficiency of an established system of government.
- ii) We believe that the involvement of civil society and regional and local authorities in the decision making process, from consultation to dialogue through to the end decision is a relevant pre-requisite for better environmental policies.
- iii) We should take into consideration that, at different levels, the involvement of organized interests is not, by itself, a sufficient condition to overcome the democratic deficit. But this shortcoming should not be a case for despair but instead an incentive to promote changes and to introduce innovations.

3. The Need for a New Governance Models from an Environmental Perspective

The background paper focuses on three key shortcomings of EU environmental policies commonly identified as those justifying further reflection on institutional innovation:

- i) Additional efforts are needed to achieve a more integrated environmental policy;
- ii) New instruments and procedures are needed to overcome the increasing complexity of environmental policies;
- iii) Deadline for implementation are frequently exceeded thus meaning that a new framework is needed to “stimulate” the compliance and enforcement of EU legislation.

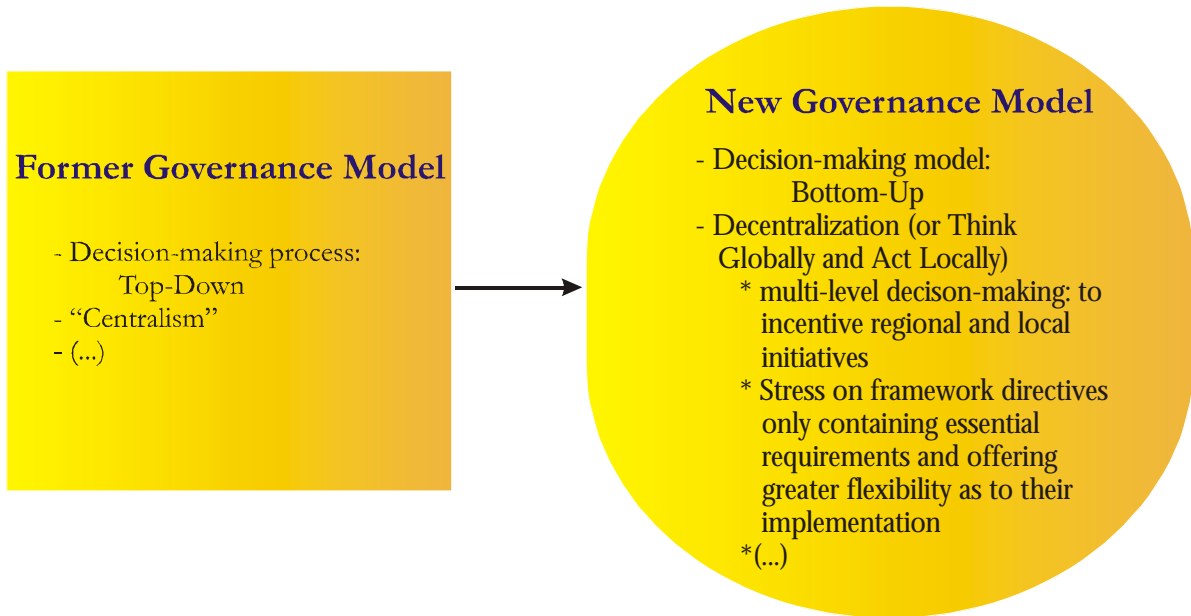
As we have referred before, the reconciliation of Europeans with their democratic institutions is a starting condition for effective and efficient policies.

The main goal is to open-up policy-making to make it more inclusive, decentralized, transparent and accountable. A better use of powers should connect the EU (national, regional and local governments; the Commission; parliaments) more closely to its citizens and lead to more effective policies.

Within this context, we agree not only with the relevance of the three above-mentioned shortcomings but also with the statement that although the new governance model might be helpful to overcome the latter two difficulties, the White paper contributes little to overcome the former problem.

Moreover, we have to recognize that a step forward is needed towards the full incorporation of the concept of sustainable development into the setting-up of public policies. We would like to focus on this aspect because this issue is almost completely absent from the background paper.

Figure 1 – Two Generations of Governance Models



4. Governance, Environment and Sustainable Development

In the aftermath of the World Summit on Sustainable Development, it is impossible to discuss the interactions between environment and governance without taking into consideration the concept of sustainable development.

We should clarify, at the outset, that by government we consider here any level of decision-making, be it national, regional, local or supranational.

4.1. Though there is no agreed definition of the term “governance”, certain elements emerge as being the key factors of good governance: openness, transparency, public participation, solidarity and cultural diversity, respect for human rights, democratic access to information and access to justice.

4.2. It is almost consensual that the most developed European Countries usually enjoy well-established and appropriate institutional frameworks, namely the so-called building blocks of good governance: a system of regulations, the definition of transparency and accountability mechanisms, etc. In this case, we

consider that a fine-tuning approach is probably enough to improve and consolidate the performance of the existing institutions.

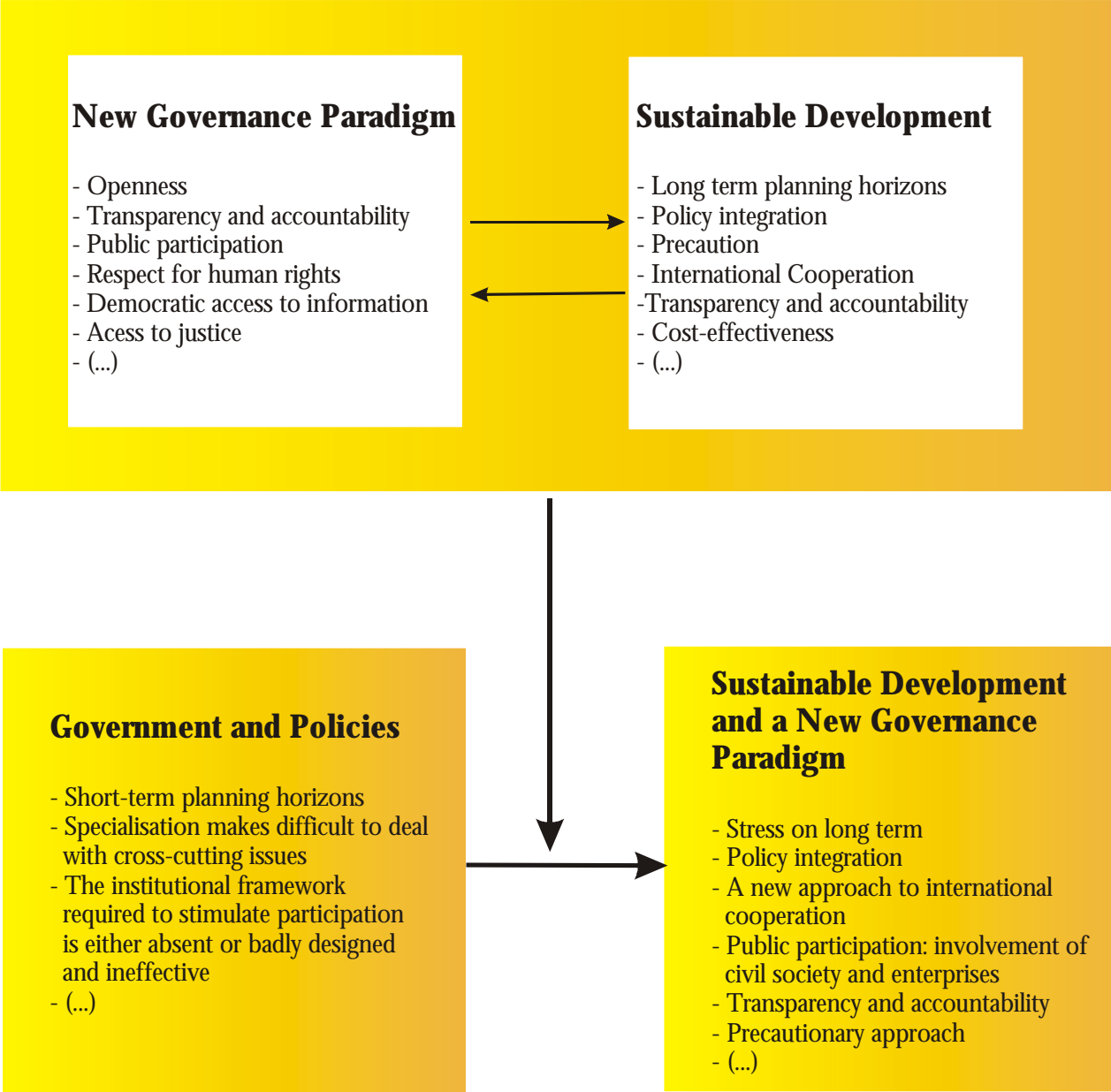
However, we wonder to what extent these well-designed institutions are suited to carry out the changes required by sustainable development? In this case, we need much more than a fine-tuning approach!

To reach a new “*ethic of human solidarity*” it is necessary civil and political leadership and responsibility.

4.3. The Bruntland Commission defined sustainable development “as development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. This means that, although without ignoring the short-term decisions, the concept of sustainable development is focused on a long-term perspective. Traditionally, governments have shown difficulties in grasping with issues based on long term planning horizons (for example, ageing issues). The pace of electoral cycles is probably one of the most relevant reasons pressing governments in power to trade-off between the long-term aims of sustainable development and their short-term impacts: concerns about the short-term consequences of policies to protect the environment and its distributive effects (in many cases these policies mostly affects the lowers income groups), on employment and, the last but not least, on the competitiveness of firms and sectors.

Taking into account the recent and innovator Club of Rome report on “**No Limits to Knowledge, but Limits to Poverty: Towards a Sustainable Knowledge Society**”, to the Johannesburg WSSD 2002 “*governance frameworks must be redesigned such that everyone can benefit from growth*”, and for this “*we need a new ethic of human solidarity to emerge in all global governance frameworks*”.

Figure 2 – Governance and Sustainable Development



4.4. In order to respond more effectively to problems of increasing complexity and diversity, modern systems of governance have been oriented to the definition of new organizational models based on an increasing degree of specialisation. This means that governments or other decision-making agents are not well-equipped to deal with cross-cutting issues.

Sustainable development policies typically involve the responsibility of several entities or levels of government, implying a major effort towards the integration of economic, social and environmental objectives.

It is becoming clearer that sectoral policies are not sufficient or even appropriate and that a systemic approach must be chosen. A systemic approach should encompass the various levels of government (be it a national, regional, local or supranational !). But, as we have stressed before, this is in clear contradiction with the dominant consensus in industrial societies in which any system of governance should be based on specialisation, expertise and high autonomy.

There is a widespread acceptance that more integration of objectives and actions should take place both “vertically” – that is across international, national and sub-national levels of government – and “horizontally” – that is between entities of a particular tier of government.

4.5. Sustainable development is of vital relevance for all citizens, because it engages options and changes affecting everybody and every sector of activity. In consequence, decision-makers should take into consideration the conflicting interests in society and economic sectors. Although governments have important responsibilities in promoting sustainable development, progress will be enhanced by the participation and the support of consumers, businessmen and civil society. The necessary involvement of citizens is very challenging and, therefore, requires well-designed mechanisms in order to stimulate an effective and efficient interaction between government and stakeholders.

4.6. For common resources such as climate, biodiversity or marine resources, there may be little incentive for one country to take unilateral action as costs would be borne by that country and benefits would accrue to all. So, international cooperation is a pre-requisite for successful sustainable policies.

Globalisation, based on the free play of comparative advantage, economies of scale and innovation amplifies and reinforces the strengths and weaknesses of free market adjustments: efficiency, instability and inequality. In order to get more stable, efficient and fair global markets, we need more international rules and stronger multilateral institutions. There is a deficit of global governance: the globalisation of markets was not accompanied by an evolution at the global level of institutions and tools suitable to regulate market mechanisms in order to pursue the values and preferences of our societies. Although the system of economic global governance (namely, The Bretton Woods Institutions and the WTO) has been criticised because it is not, anymore, suitable to deal with the new challenges of the new economic, social and political order, we should bear

in mind that, as regards social or environmental governance, the required institutional framework is either absent or badly designed and ineffective.

4.7. The extensive use of new instruments might contribute to improve policy integration:

- ? Greening of accounts and budget;
- ? Evaluation and systematic cost-benefit analysis;
- ? Accountability mechanisms;
- ? In a significant set of matters, stress on agreements with target groups rather than direct regulation (e.g. Voluntary Environmental Agreements)
- ? Greening government operations: public departments should integrate environmental considerations into their operations and put in place environmental management systems. Examples: energy-saving equipments, use of recycled paper, use of lower emission vehicles, etc.

This topic will be discussed more extensively below.

5. Environmental Policy, Governance and Tools

The traditional attitude to pollution control still is the so-called “command and control system” based on a set of legislation and regulation providing administrative guidance. This system is thought to be still effective and necessary in many fields, for example air pollution standards.

In most EU Member-States, the foundations of environmental policy are still represented by traditional command and control regulation, expressed under the form of emission standards and licences. In a certain sense, the background paper reveals a risk-avert position as far as new instruments are concerned: despite the increasing consensus on the fact that “*command and control policies*” should be complemented by other instruments, we should at most follow a prudent step-by-step strategy in order to avoid the discredit, and, perhaps, the “collapse” of the traditional building blocks of environmental policy.

The Commission adopted a positive attitude towards the setting-up of new instruments in the 5th Environmental Plan of Action (1992): “*In order to bring about substantial changes in current trends and practices and to involve all sectors of society, in a spirit of shared responsibility, a broader mix of instruments needs to be developed and applied. Environmental policy will rest on four main sets of instruments: regulatory instruments, market-based instruments (including economic and fiscal instruments and voluntary agreements), horizontal supporting instruments (research, information, education, etc.) and financial support mechanisms*”.

So, the basic idea is to develop the actual regulatory system by enriching it with new approaches. Among the envisaged advances, a closer cooperation between industry and public authorities in the definition of targets and their implementation is perceived as a necessity. In practical terms, this means that an increased use has to be made of instruments based on the voluntary implication of firms, such as voluntary agreements or codes of conduct and of good practices.

Voluntary approaches have become a massive reality in the EU. To date more than 300 of these schemes are in force in the different Member States. Different types exist though their main distinction being the degree of public intervention in the scheme. We differentiate three types: unilateral commitments by branch associations without any state intervention, public schemes which are set unilaterally by public authorities and negotiated agreements elaborated jointly by industry and public bodies.

Whereas unilateral commitments are merely a tool for communicating no regrets pollution abatement to authorities and the public opinion, voluntary schemes and negotiated agreements are policy instruments by their very nature.

Voluntary schemes are designed as a complementary instrument to other regulations. They are either used to weaken the economic impact of new environmental legislation on sectors that would otherwise be particularly affected, or as a means to induce innovation and pollution abatement beyond compliance with existing regulations.

Negotiated agreements are the most numerous voluntary approaches in the European context. They can therefore be considered as the European model of voluntary approaches. Their common characteristic is that they are negotiated between industry and public bodies and that they set collective targets for industry.

Although a more consistent assessment is needed on the efficiency and effectiveness of voluntary approaches, we would say that two main ideas might be emphasized:

- ? In several cases negotiated agreements seem to have proved that they are environmentally effective, although theoretical considerations indicate the contrary. In fact, the lack of individual sanctions in many agreements expose them to the risk of free riding, even when the regulator backs them with a strong threat of regulation;
- ? As for economic efficiency, negotiated agreements are obvious superior to command and control regulation, because they allow for a greater flexibility on individual pollution abatement targets than e.g. emission standards do. Empirical evidence indicates though, that the potential for cost minimisation is not used by firms, themselves obsessed by

maintaining a level playing field in order to avoid distortions of competition.

As to the possible reduction of administration and compliance costs, frequently put forward by supporters of voluntary approaches, as far as we know, no evaluation has been performed yet.

Nevertheless, as far as we know, the existing European institutions never performed a serious evaluation on the results and effectiveness of this negotiated agreements. Again, we wonder if these institutions are suited to carry out the changes required by sustainable development.

Then, no solid results on the efficiency of voluntary approaches are available yet and that further research is needed on these questions.

It is relevant to point out that all stakeholders involved in negotiated agreements agree that negotiated agreements provide some important positive effects: they are the keys for communication and trust, rise awareness of environmental problems and are consensus building.

In conclusion, as far as the voluntary approaches are concerned, we think that the following aspects should be stressed at the Berlin Workshop:

- i) In a certain sense, the background paper reveals a risk-avert position with relation to new instruments: despite the increasing consensus on the fact that “command and control policies” should be complemented by other instruments, we should at most follow a prudent step-by-step strategy in order to avoid the “collapse” of the traditional building blocks of environmental policy.
- ii) Voluntary approaches might be a complementary instrument to the most well established “command and control system”. As a matter of fact, voluntary agreements featured properties and characteristics (they improve communication and trust, rise awareness of environmental problems and are consensus building) making them suitable as crucial tool to make environmental policy more participated, inclusive and decentralized.
- iii) Empirical evidence suggests that voluntary approaches are more effective and probably less efficient than predicted by economic theory. However, we must recognise that we need to go further in terms of scope and consistency. The reflection on potential improvements in terms of design and implementation is crucially dependent on a more extensive knowledge and information on this topic.

CNADS, 23rd of September of 2002