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MARMARA ÜNİVERSİTESİ
AVRUPA TOPLULUĐU ENSTİTÜSÜ
AB HUKUKU ANABİLİM DALI

**AN ANALYSIS OF THE CONCEPT OF GOVERNANCE
IN THE FRAMEWORK OF EUROPEAN UNION**

GÜLCAN KORKMAZ

İstanbul, 2006

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Tez Danışmanları:
Prof. Osman Küçükahmetođlu
Yrd. Doç. Murat Tahsin Yörüng

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ABSTRACT

Governing systems of today's world are going under a rapid transformation. Especially nation-states which show determination for following principles such as democratization and sustainable development, take solid steps towards participatory democracy. The concept of government slowly leaves its throne to the idea of governance. Without a doubt, European Union gets its share from these developments. As a supranational organization carrying the burden of having a complex and delicate system, governance appears as new challenge for EU.

The aim of this thesis is to analyze governance as a concept and its impact on European Union. One focus point is the different definitions of governance and the way it is perceived by World Bank and UN, which have been effective in carrying the concept into the global agenda. As another discussion point, the perception of governance in EU, the steps that are taken and the future of European Governance are analyzed; emphasizing the importance of local governance in EU.

ÖZET

Günümüz dünyasında yönetim sistemleri hızla değişime uğramakta. Özellikle demokratikleşme ve sürdürülebilir kalkınma prensiplerini uygulamakta kararlılık gösteren ülkeler temsili demokrasiden katılımcı demokrasiye doğru geçişte oldukça somut adımlar atıyor. Yönetim olgusunun yerini giderek yönetim anlayışı alıyor. Şüphesiz ki Avrupa Birliği de bu değişimden payına düşeni almakta. Son derece karmaşık bir yapının işleyişini sağlamanın zorluklarını her alanda yaşayan Avrupa Birliği için yönetim yeni ve zorlu bir rakip olarak kendini gösteriyor.

Bu tez çalışması, yönetim kavramı ve yönetimin Avrupa Birliği'ne etkilerini incelemek amacıyla hazırlanmıştır. Bir yandan yönetim kavramının farklı tanımlarından hareketle, özellikle bu kavramı uluslararası gündeme taşıyan Dünya Bankası ve Birleşmiş Milletlerin yönetime bakış açısı yansıtılırken, öte yandan da Avrupa Birliği'nde yönetim anlayışı, atılan adımlar ve geleceğe yönelik öngörüler, Birlik'in bu konuda yerel yönetim boyutuna vermesi gereken önemin de üzerinde durularak incelenmiştir.

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LIST OF ABBREVIATIONS

CDD- Community Driven Development

CDF- Community Development Framework

CoR- Committee of the Regions

EC- European Community

EEC- European Economic Community

EU- European Union

IGC- Intergovernmental Conference

IMF- International Monetary Fund

LA-21 – Local Agenda 21

NGO- Non-governmental Organization

SEA- Single European Act

TEC- Treaty establishing a European Community

TEU- Treaty on European Union

UN- United Nations

UNCED- United Nations Conference on Environmental Development

UNDP- United Nations Development Program

UNEP- United Nations Environment Program

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INTRODUCTION

By their nature, humans can not tolerate to be alone. They have to be in constant interaction with other people or at least with their environment. Ever since humans set foot on this earth, they have lived together; in small groups, in villages, in towns. They have created communities and to avoid anarchy, they have eventually begun to create rules and principles to define the way to live in these communities. This was the start of a quest for finding the best governing system for everyone to benefit.

From Aristotle to Hobbes, for centuries, the best model of government moved from monarchy to tyranny and then to democracy; over the same question; does government operate for the interests of the people or of the rulers?

After centuries of dominance of the empires, the world went into a rapid transition to nation-states with the beginning of the 20th century. Stuck between the ideas of communism, fascism and democracy, humans' quest to find the best form of governing system continued. Hence, the rise of governance.

The general definition of governance, although the wording may differ, follows a basic principle. The major aim of governance is to create a system in which the policy makers, policy implementers and the groups effected by these policies, can actively be involved in every step of the policy process. In other words, every stakeholder becomes a part of the policy-making system.

Although it is mostly considered as a political term and this thesis focuses on its political aspects, it is also important to point out that governance may be practiced in every aspect of life. If analyzed carefully, policy-making is everywhere. Humans create policies according to social, economic and cultural necessities. One can argue that governance can even be practiced in family life as well as in private sector. The patriarchal family system slowly leaves its place to a modern family system where all members can at least state their opinions for decisions which will effect the whole family. On the other hand, in private sector, the idea of corporate governance is a result of the fact that corporates need a wide range of ideas and opinions from all of their employees- not just the executives- in order to evolve, make profit, improve their working environment and increase the motivation of the employees at the same time so that they can survive in today's competitive markets. This requires a solid network among all levels of a corporation. The concept of governance evaluated in these dynamics is the result of the developing political perception of governance.

Governance in political science has developed mostly during the end of the 20th century. Without a doubt, European integration and the existence of international organizations such as United Nations and the World Bank made immense contributions to create the concept of governance. The idea to involve every stakeholder in the decision making mechanisms, policy making and implementation is very ambitious, but at the same time one can argue that it is a true way of government; of the people and by the people.

The first part of this thesis focuses on the definition of "governance" and how it is perceived by academics and international organizations. The thesis will highlight that the perception of academics and organizations share some important common points to create one understanding of governance. Two major organizations; World Bank and United Nations were selected to show how organizations with different agendas perceive governance. In this respect, World Bank emphasizes the importance of governance especially for improving the

state economies. On the other hand, United Nations' approach to governance focuses more on sustainable development. The summits on sustainable development that UN has held and Agenda 21 adopted by UN have been the primary inspirations for many nation states and the European Union itself to create governance for sustainable development. Of course the key element here is not only to come up with a universal definition of governance, but also how to create a system of "good" governance. This issue shall also be evaluated in the upcoming parts of the thesis.

The second part of the thesis focuses on "European Governance". As a supranational organization which is moving towards a federative body, the European Union is a very important case to analyze.

Governance in European Union is practiced in different levels. There is the issue of local governance; local authorities in Europe, as the smallest governing systems and also closest to citizens, try to commit themselves to create a wide range of participation in policy-making and implementation in order to have sustainable development in their areas. There is governance at the national level, each nation-state try to involve different actors operating at national level; public sector, private sector and civil society, in order to create national policies. The most striking practice of governance in EU is governance at supranational level. All these actors mentioned above are also part of a huge and complex mechanism with different institutions of its own.

Obviously, European governance faces many challenges ranging from local to supranational level. Local, national and supranational mechanisms are in constant interaction with each other. As a result of this, legal and political challenges emerge. Local authorities wish to become more active on decisions concerning the European Community, whereas Member States oftentimes are very cautious about these demands. On the other hand, the European Commission tries to find ways to harmonize the three pillars of governance in

Europe. So, the major challenge is to include all stakeholders in policy-making and implementation by keeping all interests in balance.

It may be argued that this complex nature may become further complicated by the existence of governance. On the other hand, it is also a known fact that public opinion has become a major actor in the policy-making of European Union. Most recent example is the referendums on the European Constitution. The growing impact of public opinion suggests that “good” governance is essential for this complex structure to sustain itself.

For this reason, this thesis focuses on European Governance at two levels. The first one is on governance at institutional level. The supranational mechanisms, the way they function and their relations and the challenges faced are analyzed in this thesis. The major focus will be on the Comitology phenomenon in the European Union.

The second level of governance in Europe is the function of local authorities in European Union and the principle of “subsidiarity”. As mentioned before, local authorities are the smallest governing systems and the closest ones to citizens. In a way, the local authorities may achieve governance more easily than the Member States and the EU. Major points of discussion in this part are the European Charter of Local self-Government, the Council of European Municipalities and Regions, the Aalborg Charter and the way they effect local governance. In addition, the principle of subsidiarity and its importance for good governance are analyzed. The principle of subsidiarity has strong roots in European thought; especially in Catholic thinking. Of course, in this thesis, subsidiarity is discussed as a political and legal principle that effects governance in Europe. Major points of discussion are Article 5 of Maastricht Treaty, Article 1 of TEU and the Protocol 7 to the Treaty of Amsterdam.

The thesis furthermore focuses on the steps that are taken in the new millenium towards European governance. Main discussion points will be the Nice Treaty, Laeken

Declaration, White Paper on Governance and the Treaty establishing a Constitution for EU.

Analyzing all the points mentioned above, this thesis argues that the idea of good governance have become an essential principle in European Union. Both the union and the member states seek towards better governance because it provides principles towards more democracy and active citizenship in decision-making mechanisms. Considering the fact that European Union gives priority to democracy, rule of law and social inclusion, governance is an issue which will be on the long-term agenda of the union. The thesis furthermore argues that local governance has an increasing importance in terms of European Governance. Apart from the role of the Member States, the Parliament, the Commission and the Council, the sustainability of the Union depends much on its relations with its citizens. Considering the fact that neither of these actors are closer to citizens than local authorities, the position of local authorities and the idea of local governance is likely to strengthen in European Governance.

I. GOVERNANCE AS A CONCEPT

1.1 Governance Re-Invented? Different Definitions of Governance

Global, national, cultural and socio-economic changes all around the world signal the necessity to build and shape a new and better approach to the governing models of today. In democratic societies, it is only normal to expect constant demands to develop the environment that communities live in. The idea of governance is the result of these expectations.

As a concept in social sciences, governance is not a new term. It is known that governance was used in France in the fourteenth century where it meant “seat of government”.¹ “In 1399, Henry IV used the term in justifying his usurpation of the throne declaring that “Default of governance and undoing of the gode lawes” was the failing of his predecessors”.²

Although the term has been used for many centuries, it has gained a new meaning or to put it mildly, was “re-invented”³ with the World Bank Report of 1989 on sub-Saharan Africa in which the crisis in the region was defined as a “crisis of governance”⁴. The term was also a focus point on UNDP’s report in 1997⁵. Today, it is especially used in economics and political science.⁶ According to the political scientist Roderick Rhodes, the concept of

¹ E. Löffler. (2003). Governance and Government. In: Tony Bovaird and Elke Löffler (Eds.), *Public Management and Governance*.(163). London: Routledge.

² D. Richards and Martin J. Smith. (2002). *Governance and Public Policy in UK*. (14). Oxford University Press.

³ E. Löffler. (2003). Governance and Government. In: Tony Bovaird and Elke Löffler (Eds.), *Public Management and Governance*.(163). London: Routledge.

⁴ World Bank. (1989). *Sub Saharan Africa: From Crisis to Sustainable Development*. Washington DC.

⁵ E. Gündoğan. (2004). Yönetim Reformlarının Gerekliliği Bağlamında İyi Yönetişim ve Türkiye’de Uygulanabilirliği. *Sivil Toplum Düşünce ve Araştırma Dergisi 2*, (May/June), 15.

⁶ Governance. *European Commission*. Retrieved: August 10, 2005, http://europa.eu.int/comm/governance/governance/index_en.htm

governance is currently used in contemporary social sciences with at least six different meanings: “the minimal State, corporate governance, new public management, good governance, social-cybernetic systems and self-organised Networks”.⁷ Therefore, a number of definitions are given regarding what governance is.

According to the Canadian Institute on Governance, “governance comprises the traditions, institutions and processes that determine how power is exercised, how citizens are given a voice, and how decisions are made on issues of public concern”.⁸

For Governance International, it is “the negotiation by multiple stakeholders of improved policy outcomes and agreed governance principles. To be sustainable, these have to be made operational and evaluated by multiple stakeholders on a regular basis”.⁹

In the First World Conference on Governance which took place in Manila in 1999, the participants defined good governance “as a system that is transparent, accountable, just, fair, democratic, participatory and responsive to people’s needs”.¹⁰

Can Aktan emphasizes that governance requires a perspective among public sector, private sector and civil society.¹¹ Regarding the exercise of power, it suggests action by executive and judicial bodies, economic institutions and civil society organizations. It may be considered as a political concept that determines the relationship between the state and the civil society.

⁷ Governance. *European Commission*. Retrieved: August 10, 2005, http://europa.eu.int/comm/governance/governance/index_en.htm

⁸ What is Governance. *Canadian Institute on Governance*. Retrieved: July 3, 2005, <http://www.iog.ca/page.asp?pageID=3&htmlarea=home>

⁹ *Governance International, UK*. Retrieved: July 3, 2005, www.govint.org

¹⁰ Development Administration.(September 1999). *Newsletter of the Division for Public Economics and Public Administration 98- United Nations Department of Economic and Social Affairs*. Retrieved: April 15, 2005, <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan000209.pdf> , p. 1-3.

¹¹ Can Aktan.(2002). İyi Yönetişim ve Demokrasi. Retrieved: July 3, 2005, <http://www.canaktan.org/politika/yonetisim/yonetisim-demokrasi.htm>

If analyzed carefully, the definitions given above are not entirely different in essence. As Löffler points out, there are some common elements in these definitions which are important to mention. According to these elements, governance:

- “1. assumes a multiple stakeholder scenario where collective problems can no longer be solved only by public authorities but require the cooperation of other players- civil society, private sector- and in which it will sometimes be the case that practices such as mediation, arbitration and self-regulation may be even more effective than public action;
2. deals with formal rules-constitutions, laws, regulations- and informal rules- codes of ethics, customs, traditions- but assumes that negotiation between stakeholders seeking to use their power can alter the importance of these rules;
3. no longer focuses only on market structures, but also considers hierarchies and cooperative networks as potential facilitating structures in appropriate circumstances;
4. does not reason only in terms of the logic of ends and means, inputs and outputs, but recognizes that the characteristics of the key processes in social interaction are likely to be valuable in themselves;
5. is inherently political, concerned as it is with the interplay of stakeholders seeking to exercise power over each other in order to further their own interests- and therefore cannot be left to managerialist or Professional decision-making elites”.¹²

At this point it is important to mention that governance should not be considered as a concept that involves multiple stakeholders solely within a state. Governance can also be practiced at a global level.

Global governance may be defined as understanding and addressing global challenges which cannot be solved by one or few states alone, but which require common action. Some issues are beyond the control of only one state.¹³ Environment, poverty and sustainable development are such issues that should be discussed and evaluated within a global context, because they are “transnational and have direct domestic impacts”.¹⁴

Multiple levels of global governance include civil society, the state, regional institutions and international organizations. In the absence of a world government,

¹² E. Löffler. (2003). Governance and Government. In: Tony Bovaird and Elke Löffler (Eds.), *Public Management and Governance*. London: Routledge, p.163.

¹³ J. N. Clarke. (2004). Conclusion: Dimensions and Processes of Global Governance. In: John N. Clarke and Geoffrey R. Edwards (Eds.), *Global Governance in the Twenty First Century*. Palgrave Macmillan, p. 256.

¹⁴ *Ibid*, p. 7.

international organizations assume the facilitating role in global governance. The next chapter also focus on how international organizations such as World Bank and United Nations contribute to the general understanding of how governance should be perceived and implemented.

1.2 Governance in the Agenda of International Organizations

1.2.1 World Bank and Governance

As mentioned earlier in the chapter, the modern understanding of governance first appeared in World Bank's Report in 1989. Since then, World Bank uses this term frequently in its reports; especially concerning the issues on poverty reduction, public sector reform, capacity building and anticorruption.

During his vice-presidency in World Bank, the UNDP President Kemal Derviş pointed out the Bank's approach regarding governance:

“The critical importance of well-performing public institutions and good governance for development and poverty reduction has come to the forefront in the 1990s. Just as it was increasingly recognized in the 1980s that individual investment projects are less likely to succeed in a distorted policy environment, so it has become obvious in the 1990s that neither good policies nor good investments are likely to emerge and be sustainable in an environment with dysfunctional institutions and poor governance.”¹⁵

¹⁵ World Bank (2000). *Reforming Public Institutions and Strengthening Governance: A World Bank Strategy*. USA, p. vii.

In “The World Development Report 1997: The State in a Changing World”, World Bank has created a framework for improving the performance of governments. “The World Development Report 2000/2001: Attacking Poverty” focuses on good governance and effective public sector institutions for poverty reduction.

How then, the World Bank defines governance? In its official documents, World Bank defines governance as “an order which expresses clear and foreseeable decision-making process, professional bureaucratic administration, responsible government, existence of an actively involved civil society in public process and rule of law”.¹⁶

Parallel to its objectives and specialty areas, World Bank (also organizations such as IMF and OECD) naturally tends to focus more on governance issues that mainly involve economic aspects which may contribute to overall development and prosperity of states and their citizens. Therefore, the Bank builds its reports on the data regarding issues such as public expenditure, financial management, tax policy, tax administration and regulation of the private sector. As a result of this, World Bank has often been criticised for its approach on governance by writers and intellectuals from the left wing for using the concept to feed the capitalist order and to create new markets that would increase the level of consumption.

On the other hand, beginning from 1999, it can be observed that World Bank has reshaped its approach to governance. In the recent years, the Bank adopted several new policies and programs which aimed to promote a more holistic, participatory, and results-based approach to development and poverty reduction. According to the World Bank publication “Working Together: World Bank- Civil Society Relations”, most of these new approaches and initiatives were based on lessons learned from the successful grassroots

¹⁶ E. Gündoğan. (2004). Yönetim Reformlarının Gerekliliği Bağlamında İyi Yönetişim ve Türkiye’de Uygulanabilirliği. *Sivil Toplum Düşünce ve Araştırma Dergisi* 2, (May/June), p. 15.

experience of civil society and were adopted after consultation with Civil Society Organizations.

In the light of this policy change, the Bank has created a new framework called the Comprehensive Development Framework (CDF) that promotes a multidimensional approach.¹⁷ This framework enables each country to adopt policies on development by involving all the related stakeholders and not just the government.

Considering the fact that World Bank has often been criticised for its narrow approach and its usage of best practice models on every country without further analyzing its feasibility the Bank's new turn for involving civil society in strategy development is worth emphasizing.

Apart from that, the Bank also embraced the Millennium Development Goals, which constitute eight basic poverty reduction goals with the overall aim to half income poverty worldwide by 2015. This is another sign of the Bank to widen the range of issues that need to be developed for the realization of good governance. In addition to these approaches, World Bank has adopted the Community Driven Development (CDD). This approach focuses on development in which community is the main driver. CDD foresees a development model where the control, allocation and management of resources are handled by local governments, civil society organizations and private sector together with participatory decision-making and monitoring mechanisms.¹⁸

Another point that needs to be highlighted with regards to World Bank's approach on governance is on legal reforms. Beginning from 2000, the Bank emphasized the importance

¹⁷ World Bank (2003). *Working Together: World Bank- Civil Society Relations*. World Bank Publication: Washington, p. 14.

¹⁸ *Ibid.*

of transparent legal systems and the rule of law which are essential for growth, for protecting human rights and democracy.

It is true that governance has gained its popularity on a global level because of World Bank. However, following the first decade of its initial usage World Bank preferred to focus on a more economy based approach of governance. As United Nations and the European Union located governance in the center of their policy development approaches, and taking into consideration the criticisms, World Bank started to make the necessary modifications on its understanding of governance by including social and political aspects as well.

1.2.2 United Nations' Policy and Agenda 21

United Nations' understanding of governance has well-established roots on the promotion of sustainable development. Beginning from the second half of the 20th century, UN started to raise the world's attention to the fact that as humankind evolves for better life standards, it consumes an enormous amount of natural resources. This fast and out of proportion consumption threatens the future generations since there is a high chance that there may not be enough natural resources for next generations to sustain themselves. The concept of sustainable development rose from these concerns.

United Nations Conference on the Human Environment, which was held in 1972 in Stockholm, established the basis for the UN policy of sustainable development. The conference led to the creation of environment ministries and agencies in more than 100

countries. In addition, the conference made a triggering effect for the establishment of non-governmental and intergovernmental organizations that focused on environment and sustainable development. Another result of the conference was the creation of United Nations Environment Program (UNEP), which was quite influential in the area of international environmental law.¹⁹ However, the most important outcome of this conference was that it led to a series of conferences and summits which shaped the principles of governance and sustainable development of today. As a main principle of governance, the role of participation in achieving sustainable development found its first expression in this conference.²⁰

Stockholm Conference was followed by the first UN Habitat Conference which was held in 1976, in Vancouver. The Conference mostly pointed out the states' will to establish sustainable human settlements. In addition, the Conference results also hinted the necessity for the participation of local authorities in order to reach the goal of sustainable development. Until this time, UN was an international organization that operated with the participation of nation-states. For the first time, UN started to cooperate with non-governmental organizations and local authorities to address this issue. This can be considered as the first step towards using the principle of governance at UN level, because UN has realized that the involvement of local authorities and NGOs were crucial in reaching out citizens who are the most important actors for the implementation of sustainable development. Therefore, the idea of involving all actors for policy-making and implementation became an inevitable necessity for UN's sustainable development policy.

¹⁹ Lars-Göran Engfeldt. Chronicle Essay: The Road from Stockholm to Johannesburg. *United Nations Chronicle Online Edition*, Retrieved March 5, 2005, http://www.un.org/Pubs/chronicle/2002/issue3/0302p14_essay.html

²⁰ Sadun Emrealp. (2005). *Handbook on Facilitative Information for the Implementation of Local Agenda 21*. IULA-EMME (UCLA-MEWA) Publication, p.13.

On the other hand, this necessity was not immediately reflected on UN's policy-making. In 1983, the World Commission on Environment and Development was set up by the UN General Assembly. The main task of the Commission was to identify the urgent problems on environment and development and provide permanent solutions and strategies to these problems. Following the few years of its establishment, the Commission's most important work was the 1987 report entitled "Our Common Future". The report is widely known as the "Brundlandt Report", named after the Chairman of the Commission, focused mainly on two issues. The first one was to make a broad definition of "sustainable development", and the second issue was to investigate ways to come up with a global action plan to address sustainable development.²¹ The report defines sustainable development as "development that delivers basic environmental, social and economic services all without threatening the viability of the natural, built and social systems upon which these services depend".²²

While the report is successful in creating an accepted definition of sustainable development, it is weak in terms of giving the necessary value to local authorities, civil society and active participation in dealing with the problems. The Local Agenda 21 Turkey National Coordinator Sadun Emrealp argues that

"... the role envisaged for local authorities under the heading "Strengthening local authorities" is restricted with more efficient implementation of central government policies at local level. Likewise, "citizen involvement" incorporated into the report as a significant innovation is highlighted particularly with respect to reinforcing "self-reliance and local governance by the poor in their own Neighborhood associations" with a view towards filling "the gaps in services left by the local government". The civil society organizations, still not being seriously considered as "partners", are merely expected to provide cost-effective channels for development assistance to the community groups."²³

²¹ UN Department of Economic and Social Affairs Division for Sustainable Development. *United Nations*. Retrieved: March 23, 2005. <http://www.un.org/esa/sustdev/sdissues/consumption/cppgoph2.htm>

²² Sadun Emrealp. (2005). *Handbook on Facilitative Information for the Implementation of Local Agenda 21*. IULA-EMME (UCLA-MEWA) Publication, p.13.

²³ *Ibid.*

The report is a clear sign that although UN had every intention to promote active participation at the local level, it is at the same time possible that the organization did not wish to receive reactions from nation-states and central governments. After 10 years of the first Habitat Conference, the idea of active participation of all actors for policy-making and implementation still stayed as a common target to be realized, but was delayed for political purposes.

The chain of conferences on sustainable development took a new turn with the UN Conference on Environment and Development, which took place in 1992, in Rio. Widely known as the “Earth Summit”, it was the second largest conference on environmental issues. The conference was truly global in the sense that 172 states participated and were mostly represented at head of State and government level. It is also important to emphasize that the Conference was a successful event in terms of NGO participation. A parallel NGO Forum was organized during the Conference to which 2400 NGO representatives and a total of 17000 people attended.²⁴

²⁴ UN Conference on Environment and Development. *United Nations*. Retrieved: March 5, 2005. <http://www.un.org/geninfo/bp/enviro.html>

Five major documents were created as a result of this global event²⁵:

1. Rio Declaration on Environment and Development
2. Statement of Forest Principles
3. UN Framework Convention Climate Change
4. UN Convention on Biological Diversity
5. Agenda 21.

The most valued outcome of this Summit is Agenda 21. It is an international plan of action to achieve sustainable development. As underlined in the Summit's web site, Agenda 21,

“outlines key policies for achieving sustainable development that meets the needs of the poor and recognises the limits of development to meet global needs. “Needs” is interpreted not solely in terms of economic interests but also to be those of a fully functional, harmonious, global system that incorporates both people and ecosystems. Agenda 21 has become the blueprint for sustainability and forms the basis for sustainable development strategies. It attempts to define a balance between production, consumption, population, development and the Earth's life-supporting capacity. Its recommendations range from new ways to educate, to new ways to care for natural resources and new ways to participate in shaping a sustainable economy. It addresses poverty, excessive consumption, health and education, cities and Agriculture; food and natural resource management and several more subjects. The overall objective of Agenda 21 was very ambitious for it was nothing less than designing a safe and just world with people in the South and North alike would live an equitable life within Earth's capacities.”²⁶

This document may be considered as a milestone in the participation of local authorities in policy-making and implementation for sustainable development. The document is declared in consensus with all the 172 nation-states that attended the Earth Summit. It shows a clear will to involve local authorities and to create partnerships in order to fulfill global commitments. Apart from this show of will, the role of local authorities in Agenda 21 is stated in Chapter 28 in detail.

²⁵ *Ibid.*

²⁶ Agenda 21. *World Summit on Sustainable Development*. Retrieved: March 2, 2005.
<http://www.worldsummit2002.org/index.htm?http://www.worldsummit2002.org/guide/unced.htm>

This chapter highlights that “Local authorities construct, operate and maintain economic, social and environmental infrastructure, oversee planning processes, establish local environmental policies and regulations, and assist in implementing national and subnational environmental policies. As the level of governance closest to the people, they play a vital role in educating, mobilizing and responding to the public to promote sustainable development.”²⁷

Chapter 28 also highlights the methodology to fulfill the above-mentioned objectives. According to this chapter, each local authority is encouraged to create an opportunity for dialogue with local stakeholders which are citizens, NGOs and private sector. This common dialogue may lead to an atmosphere of consultation and consensus in which all parties acknowledge each other and find solutions to common problems. As a result, all stakeholders may be actively involved in needs assessment, policy-making and policy implementation. The chapter defines this process as a Local Agenda 21 program. It can also be defined as a governance program promoting democratization.

Apart from Chapter 28, in terms of improving partnerships and participation, local authorities may also be important actors for strengthening the role of major groups, such as children, youth, women, indigenous people, NGOs, workers, trade unions and farmers, as stated in Chapters 24-27 and 29-32.²⁸

Following the 1992 Earth Summit, another series of conferences were held to strengthen the mission of Agenda 21. These conferences and summits are listed below:

1. 1993 Vienna Conference on Human Rights
2. 1994 Cairo Conference on Population and Development
3. 1995 Copenhagen Summit for Social Development
4. 1995 Beijing Fourth Conference on Women
5. 1996 Istanbul Habitat II Summit
6. 2000 New York Millennium Summit
7. 2002 Johannesburg Summit on Sustainable Development

²⁷ Agenda 21-Chapter 28. *UN Department of Social and Economic Affairs Division for Sustainable Development*. Retrieved: March 15, 2005.

<http://www.un.org/esa/sustdev/documents/agenda21/english/agenda21chapter28.htm>

²⁸ Sadun Emrealp. (2005). *Handbook on Facilitative Information for the Implementation of Local Agenda 21*. IULA-EMME (UCLA-MEWA) Publication, p.16.

Emrealp argues that these conferences and summits “augmented the world-wide acknowledgement of global partnerships and constituted the strongholds of good governance principles”.²⁹

Among these conferences, 1996 Istanbul Habitat II Summit and the 2002 Johannesburg Summit play vital roles in the initiation of Local Agenda 21 programs worldwide. These summits are especially important in highlighting the framework of good governance.

The Preamble of the Habitat Agenda clearly defines good governance principles for sustainable development; “Democracy, respect for human rights, transparent, representative and accountable government and administration in all sectors of society, as well as effective participation by civil society, are indispensable foundations for the realization of sustainable development”.³⁰

The Preamble also underlines the importance of involving all stakeholders for development; “The sooner communities, local governments and partnerships among the public, private and community sectors join efforts to create comprehensive, bold and innovative strategies for shelter and human settlements, the better the prospects will be for the safety, health and well-being of people and the brighter the outlook for solutions to global environment and social problems”.³¹

Furthermore, the Habitat Agenda focuses on decentralization and strengthening local authorities and citizenship for active participation. The following phrases of Section IV. D on capacity building and institutional development clearly proves Agenda’s focus points for good governance:

“Article 180. To ensure effective decentralization and strengthening of local authorities and their associations/networks, Governments at the appropriate levels should:

- (b) Review and revise, as appropriate, legislation to increase local autonomy and participation in decision-making, implementation, and resource mobilization and use, especially with respect to human, technical and financial resources and local enterprise development, within the overall framework of a national, social, economic and environmental strategy, and encourage the participation of the inhabitants in decision-making regarding their cities, neighbourhoods or dwellings;
- (c) Develop education in citizenship to emphasize the role of individuals as actors in their communities;
- (h) Encourage institutionalization of broad-based participation, including consultative mechanisms, in decision-making and management processes at the local level;
- (i) Strengthen the capacity of local authorities to engage the local private and community sectors in goal-setting and in establishing local priorities and environmentally sound standards for infrastructure development, services delivery and local economic development;

²⁹ *Ibid*, p.21.

³⁰ The Habitat Agenda- Chapter 1 –Article 4. *UN Habitat*. Retrieved: June 4, 2005.
<http://www.unhabitat.org/unchs/english/hagenda/ch-1a.htm>

³¹ *Ibid*, Article 5.

- (j) Promote policy dialogue among all levels of government and the private and community sectors and other representatives of civil society to improve planning and implementation;
- (k) Within the framework of governance, establish public-private citizens' partnerships for urban innovation, and analyse, evaluate and disseminate information on successful partnerships;
- m) Reinforce measures to eradicate corruption and ensure greater transparency, efficiency, accountability, responsiveness and community participation in the management of local resources;
- (n) Enable local authorities and their associations/networks to take initiatives in national and international cooperation and, in particular, to share good practices and innovative approaches to sustainable human settlements management".³²

Following the Habitat II Summit, the importance of governance and its principles came to the attention of many developing countries, including Turkey. This led to the initiation of Local Agenda 21 Program in Turkey which still continues today. The objectives and the activities of this program is given in the last part of this chapter.

Parallel to the summits and conferences on sustainable development, United Nations continued its activities on this issue through its own organizations such as UNDP.

United Nations Development Program is a program which promotes and supports sustainable human development all around the world. UNDP considers this objective as one of the biggest challenges that all societies, especially the ones that are developing or underdeveloped, have to deal with.

In 1994, UNDP has briefly outlined that "the goal of governance initiatives should be to develop capacities that are needed to realise development that gives priority to the poor, advances women, sustains the environment and creates needed opportunities for employment and other livelihoods".³³

The broadest explanation of UNDP on the definition of governance and how it can better be implemented in countries appeared on UNDP's Policy Document on "Governance for Sustainable Development" which was published in January 1997.

³² *Ibid*, Chapter IV-D.

³³ Initiatives For Change.(1994). *UNDP*. Retrieved: June 12, 2005. <http://www.undp.org>

In this policy document, governance is defined as an exercise of economic, political and administrative authority to manage a country's affairs at all levels. Therefore, according to UNDP, governance has three major components: Economic governance which include decision-making processes that affect a country's economic activities and its relationship with other economies. Its major objective is to create equity, reduce poverty and increase the quality of life. The second component of governance, which is political governance is mostly concerned with improving decision-making mechanisms and formulating effective policies. Last, administrative governance creates a system of policy implementation which are formulated by political governance and financed by economic governance for the good of the citizens. On the other hand, the document also emphasizes that these components are not solely the responsibility of governments or the state. Governance creates a mechanism in which citizens and groups articulate their interests and exercise their legal rights. In order for good governance to exist, UNDP argues that these mechanisms should possess several elements such as participation, transparency, accountability, effectiveness, equity and promotion of the rule of law.³⁴ This argument underlines that, good governance cannot exist without the active participation of civil society.

According to UNDP, civil society lies between the individual and the state, it is structured in a way that individuals and groups interact socially, politically and economically, within the framework of for and informal laws. Civil society organisations such as trade unions; non-governmental organisations; gender, language, cultural and religious groups; charities; business associations; social and sports clubs; cooperatives and community development organisations; environmental groups; professional associations; academic and

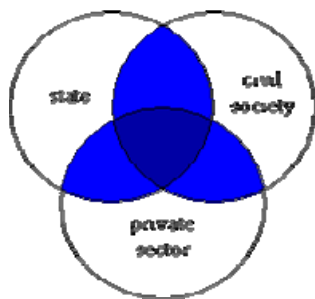
³⁴ Governance For Sustainable Human Development. (1997). *UNDP*. Retrieved: February 21, 2005. <http://www.magnet.undp.org/policy/chapter1.htm>

policy institutions; and media outlets, are the host of associations around which society voluntarily organises.³⁵

Apart from state and civil society, private sector also plays a crucial role in the effective implementation of governance. Especially regarding the component of economic governance, private sector may play an essential role in poverty reduction, job creation and functioning market economy.

Therefore, it is logical to argue that governance has three components; political, economic and administrative; and three major domains which are the state, civil society and the private sector. The intersection of these three domains create the necessary circumstances for contributing to sustainable human development.

FIGURE 1.1³⁶



UNDP also argues that while there are specific definitions and principles to create an efficient government, the same thing cannot be said for governance. As a result, UNDP came up with some basic characteristics that good governance should have:

³⁵ *Ibid.*

³⁶ *Ibid.*

“Participation: All men and women should have a voice in decision-making, either directly or through legitimate intermediate institutions that represent their interests. Such broad participation is built on freedom of association and speech, as well as capacities to participate constructively.

Rule of law: Legal frameworks should be fair and enforced impartially, particularly the laws on human rights.

Transparency: Transparency is built on the free flow of information. Processes, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them.

Responsiveness: Institutions and processes try to serve all stakeholders.

Consensus orientation: Good governance mediates differing interests to reach a broad consensus on what is in the best interests of the group and, where possible, on policies and procedures.

Equity: All men and women have opportunities to improve or maintain their well-being.

Effectiveness and efficiency: Processes and institutions produce results that meet needs while making the best use of resources.

Accountability: Decision-makers in government, the private sector and civil society organisations are accountable to the public, as well as to institutional stakeholders. This accountability differs depending on the organisation and whether the decision is internal or external to an organisation.

Strategic vision: Leaders and the public have a broad and long-term perspective on good governance and human development, along with a sense of what is needed for such development. There is also an understanding of the historical, cultural and social complexities in which that perspective is grounded”.³⁷

The above-mentioned basic characteristics of governance are complimentary and are not effective by themselves. For example, information that is accessible can only be realized with transparency, participation and effective decision-making. In addition, broad participation contributes both to the exchange of information needed for effective decision-making and for the legitimacy of those decisions. Legitimacy, on the other hand, means effective implementation and encourages further participation. And responsive institutions must be transparent and function according to the rule of law if they are to be equitable.³⁸

Following these developments, UN organized another pivotal event in New York in which humanity declared its will to achieve sustainable development at the dawn of the century. As a result of this summit, the famous Millenium Development Goals were shaped.³⁹

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ UN Millenium Development Goals. Retrieved: March 1, 2005. <http://www.un.org/millenniumgoals>

1. Eradicate extreme poverty and hunger
2. Achieve universal primary education
3. Promote gender equality and empower women
4. Reduce child mortality
5. Improve maternal health
6. Combat HIV/AIDS, malaria and other diseases
7. Ensure environmental sustainability
8. Develop a global partnership for development

UN member states reached a consensus to realize these goals by the year 2015. The Millenium Declaration at the end of the Summit also highlights the importance of human rights, democracy and governance in order to achieve these targets. Chapter 5 of the Declaration underlines the following commitments:

“We will spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development. We resolve therefore:

- To respect fully and uphold the Universal Declaration of Human Rights.
- To strive for the full protection and promotion in all our countries of civil, political, economic, social and cultural rights for all.
- To strengthen the capacity of all our countries to implement the principles and practices of democracy and respect for human rights, including minority rights.
- To combat all forms of violence against women and to implement the Convention on the Elimination of All Forms of Discrimination against Women.
- To take measures to ensure respect for and protection of the human rights of migrants, migrant workers and their families, to eliminate the increasing acts of racism and xenophobia in many societies and to promote greater harmony and tolerance in all societies.
- To work collectively for more inclusive political processes, allowing genuine participation by all citizens in all our countries.
- To ensure the freedom of the media to perform their essential role and the right of the public to have access to information.”⁴⁰

⁴⁰ UN Millenium Declaration. (2000). *Office of the United Nations High Commissioner for Human Rights*. Retrieved: March 1, 2005. <http://www.ohchr.org/english/law/millennium.htm>

The last chain of the sustainable development summits is the 2002 Johannesburg Summit. As the first UN Summit of 21st century, the summit “signifies the utilization of the “sustainable development” title for the first time in a global conference, is also known as “Rio+10” as it aimed at evaluating the implementation of Agenda 21 during the decade in the aftermath of 1992 Rio Summit”.⁴¹

The summit has shown that although UN has made many events, declarations and programs, the achievements in general remained limited. This is explicitly underlined by the expression “implementation gap” in the report entitled “*Implementing Agenda 21: Report of the Secretary-General*”, in which UN Secretary-General Kofi Annan emphasized that “Despite the gaps in implementation, Agenda 21 and UNCED principles remain as valid as they were in 1992”.⁴²

The report also focused on the impact of Local Agenda 21s in creating participatory mechanisms for sustainable development. It is highlighted that

“At the local level, the most successful umbrella for participation has been the local Agenda 21 initiatives, which today exist in over 3,000 communities of varying sizes, from villages to major metropolitan areas, around the world. The strength of Local Agenda 21 initiatives has been their multi-stakeholder approach to local decision-making, the identification of priorities, finding solutions and implementation.”⁴³

These statements may be considered as a message to UN member states to accelerate their activities on local governance for sustainable development.

⁴¹ Sadun Emrealp. (2005). *Handbook on Facilitative Information for the Implementation of Local Agenda 21*. IULA-EMME (UCLA-MEWA) Publication, p. 25.

⁴² Kofi Annan. (2002). *Implementing Agenda 21: Report of the Secretary-General Article 9. UN Economic and Social Council Commission on Sustainable Development acting as the preparatory committee for the World Summit on Sustainable Development, Second Session*. Retrieved: March 23, 2006. <http://www.johannesburgsummit.org/html/documents/no170793sgreport.pdf> , p. 5.

⁴³ *Ibid.*

II. GOVERNANCE IN EUROPEAN UNION

When the European Coal and Steel Community was established, it was mainly to avoid another major conflict in Europe. For many years, the main focus of the Community was on economic development and creation of a common market. However, as the Community enlarged, new issues on politics and social life emerged which required attention. Besides economic strength and stability, democracy and human rights also became essential principles for membership to the European Union. Especially since Maastricht, European integration is no longer about just building a common market or creating a monetary union; it is also about political and social regulation.

As the Union enlarged and the issues concerning the Union has increased, the question of how EU should operate has become a major subject. “The European Union is governed without government, and, therefore it should be governed in a particular way”.⁴⁴ As a result, in the absence of a European Government, governance, the catchword in today’s academic and practitioner discussion, can be considered as an “antidote” to the concerns on how EU shall operate in the long run.⁴⁵

⁴⁴ Beate Kohler-Koch. (1999). The Evolution and Transformation of European Governance. In: Beate Kohler-Koch and Rainer Eising (Eds.), *The Transformation of Governance in the European Union*. London:Routledge, p. 14.

⁴⁵ H. Wallace. (2003). Contrasting Images of European Governance. In Beate Kohler-Koch (Eds.), *Linking EU and National Governance*. Oxford University Pres, p. 1.

The question, then, is what model of governance is ideal for the European Union? Sweet and Sandholtz propose a continuum that stretches between two ideal modes; intergovernmental and supranational. In intergovernmental politics, the central players are the national executives of the member-states. For the creation of common policies, these members bargain with each other constantly. Bargaining is shaped by relative powers of the member-states and also by state preferences. These preferences are then given agency, as negotiating positions, by national executives in EC organizations such as the Council of Ministers. The EC level of governance operates as an international regime in the functional, transaction-costs mode: it is a “passive structure” that enhances the efficiency of interstate bargaining.⁴⁶

Sweet and Sandholtz argue that the second ideal model is constituted by supranational politics. According to them, in the supranational mode of governance, centralized governmental structures which are constituted at the supranational level possess jurisdiction over specific policy domains within the territory comprised by the member-states. In exercising that jurisdiction, supranational organizations are capable of constraining the behaviour of all actors, including the member-states, within those domains.⁴⁷

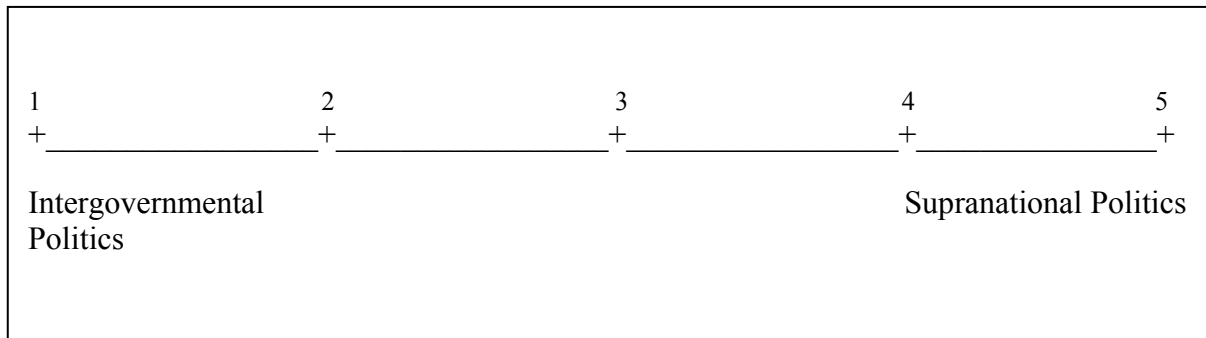
The continuum from intergovernmental politics to supranational politics which was proposed by Sweet and Sandholtz measures the movement from intergovernmental to supranational governance in three interrelated dimensions: EC Rules, EC Organizations and

⁴⁶ A.S. Sweet and Wayne Sandholtz. (1998) *Integration and Supranational Governance*. In: Wayne Sandholtz and Alec Stone Sweet (Eds.), *European Integration and Supranational Governance*. Oxford University Press, p. 8.

⁴⁷ *Ibid.*

transnational society. The movement from left to right along the continuum measures the increasing presence and the intensity of each factor mentioned above.⁴⁸

FIGURE 2.1 Governance in the European Union⁴⁹



2.1 Governance at Supranational Level

2.1.1 Managing Governance within the Institutions

Committees exist since 1960s when the Council decided that in order to deal with the excessive work load, especially about implementation of Community's agricultural policy, certain discretionary powers should be delegated to the European Commission. Originally, the issue was governed by Article 155, paragraph 4, EEC. According to this article, the Commission shall "exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter".⁵⁰ However, this decision, which practically meant the

⁴⁸ *Ibid*, p.250.

⁴⁹ *Ibid*, p. 250.

⁵⁰ J.P. Jacques.(1999). Implementing Powers and Comitology. In: Christian Joerges and Ellen Vos (Eds.) *EU Committees: Social Regulation, Law and Politics*. Oxford: Hart Publishing, p.60.

unconditional delegation of powers to the Commission, was strongly opposed by the member-states. As a result, the Council put an obligation to the Commission that before taking any decision, it should consult a committee of national representatives. This was the first initiative. The increasing level of Community activities became apparent in 1972 during the Paris Summit, where it was decided that the Commission should participate more in the policy-making process, since the Community was faced with an increasing amount of economic and social interests. As a result, parallel to this increase in interests and the growing involvement of the Commission meant an increase in the number of committees, which meant the necessity to form a procedure.

The committees can be classified according to several criteria, if looked from a legal policy perspective. According to the first criterion; committees can be divided into two. The first are those whose consultation is compulsory for drafting community legislation and these are also divided into three; advisory, management and regulatory. The second are the ones whose consultation is not compulsory. It is important to note that there may be transfers among these categories; from non-compulsory to compulsory, for example.⁵¹

⁵¹ E. Vos. (1999). EU Committees: The Evolution of Unforeseen Institutional Actors in European Product Regulation. In: Christian Joerges and Ellen Vos (Eds.) *EU Committees: Social Regulation, Law and Politics*. Oxford: Hart Publishing, p. 21,22.

According to the second classification, the committees may be divided into two. This division is made by the Act which they are set up. The committees may be set up by a Council Act or they may be set up by a Commission Act. The Committees set up by a Council Act can either be established by a separate Council Act, or they may be included in a Council Act regulating a specific subject matter. Rest of the committees are created by a specific Commission Act. Generally, the Committees set up by the Council Act, need to be consulted in decision-making procedure.⁵²

The existence of committees basically is the result of a power struggle between the European institutions. While its existence is an important step for increasing the involvement of stakeholders in decision-making, it is also a question whether the committees and the procedures served to promote good governance in Europe.

a. 1987 Comitology Decision

The Comitology Decision actually appeared as a result of the necessity to create a new strategy for internal market. During 1980s, the Community realized that a new approach is necessary to achieve an integrated internal market instead of continuing with the traditional approach for market harmonization.

As a result, in 1985, the Commission, launched a new strategy on the completion of the internal market in its White Paper. Justified under Article 36 EC, this new strategy has foreseen the Commission to harmonize the trade barriers, while limiting itself to draft legislation on safety requirements. In addition this new approach, along with the Single European Act Article 18 which supplemented the EEC Treaty^{100a} that introduced qualified

⁵² *Ibid.*

majority voting, acted as a complementary to accelerate the decision-making processes and make it more efficient. The article is as follows:

“By way of derogation from Article 100 and save where otherwise provided in this Treaty, the following provisions shall apply for the achievement of the objectives set out in Article 8a. The Council shall, acting by a qualified majority on a proposal from the Commission in co-operation with the European Parliament and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market”.⁵³

Moreover, in order to further fasten the decision-making process, a third indent was inserted into Article 145 EC, which obliged the Council to delegate implementing powers to the Commission, and at the same time demanded that it introduce formal committee procedures:⁵⁴

“To ensure that the objectives set out in this Treaty are attained the Council shall, in accordance with the provisions of this Treaty: ensure coordination of the general economic policies of the Member States, have power to take decisions, confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. The Council may impose certain requirements in respect of the exercise of these powers. The Council may also reserve the right, in specific cases, to exercise directly implementing powers itself. The procedures referred to above must be consonant with principles and rules to be laid down in advance by the Council, acting unanimously on a proposal from the Commission and after obtaining the opinion of the European Parliament”.⁵⁵

This development was followed by a heated debate in the Council and finally the Council adopted Decision 87/373/EEC, known as the Comitology Decision.⁵⁶ According to this decision, the Council has delegated implementing powers to the Commission by advisory, management and regulatory committees. The decision also foreseen the creation of a safeguard committee procedure.

⁵³ Single European Act. *British Management Data Foundation*. Retrieved: January 28, 2006. <http://www.bmdf.co.uk/singleeuropeanact.pdf>, p. 11.

⁵⁴ J.P. Jacques.(1999). Implementing Powers and Comitology. In: Christian Joerges and Ellen Vos (Eds.) *EU Committees: Social Regulation, Law and Politics*. Oxford: Hart Publishing, p. 61.

⁵⁵ EurLex 12002E202. Retrieved: May 4, 2006. http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=12002E202&lg=EN

⁵⁶ E. Vos. (1999). EU Committees: The Evolution of Unforeseen Institutional Actors in European Product Regulation. In: Christian Joerges and Ellen Vos (Eds.) *EU Committees: Social Regulation, Law and Politics*. Oxford: Hart Publishing, p. 24.

The procedures described below are the results of the 1987 Comitology Decision. At this point, it is important to note that although the main reason for the Decision was to fasten the decision-making process, the procedures and their sub-divisions have created a complex structure.

b. Committee Procedures

Among the three, the advisory committees are least influential. According to this procedure, the Commission must consult a committee for an opinion. The committee consists of Member-State representatives. The chair is a Commission representative. The draft measures are submitted to the committee. The Committee must take a decision within the time limit set by the chair in accordance with the urgency of the matter. The opinion may be adopted through a voting procedure if necessary. The opinion is recorded in the minutes where each Member-state may have its position registered. The Commission, when adopting its final decision, must take into account the committee's opinion and further inform the committee of the manner in which its opinion has been taken into account.⁵⁷

According to the management committee procedure, the Commission is required to consult a committee composed of representatives of the Member-states and which is again chaired by a Commission representative. In case the committee decides in favor of the draft or fails to reach a consensus on a decision, the Commission could adopt it immediately.

⁵⁷ *Ibid.*

However, if the committee decided against the draft, then the Commission had to take the issue back to the Council. In such a case, there are two possible procedures.

“According to variant (a), the Commission may defer the application of the measures for a period not longer than a month from the date of communication to the Council. Within this period, the Council may take a different decision by qualified majority. According to variant (b), the Commission is obliged to defer application of the measures for a period to be laid down in each Council act of up to a maximum of three months from the date of communication to the Council. Within this period, the Council may adopt a different decision by qualified majority”.⁵⁸

The major difference in regulatory committee procedure from the management committee procedure is that if the Commission wants to adopt measures which are not in accordance with the committee’s opinion, or in the absence of an opinion, the Commission without delay submit a proposal of the measures to be adopted to the Council. The Council then acts by qualified majority.

“Variant (a) requires that if, on the expiry of the time limit laid down in each Council act (a maximum of three months from the date of referral to the Council), the Council has not acted the Commission then adopts the proposed measures. According to variant (b), if, on the expiry of the time limit laid down in each Council act (up to a period of three months from the date of referral to the Council), the Council has not acted the proposed measures are adopted by the Commission, save where the Council has decided against the said measures by simple majority”.⁵⁹

In cases where the Council confers on the Commission the power to decide on safeguard measures, safeguard procedure is applied. According to this procedure, the Council and the Member-States are notified by the Commission on any decision about safe guard measures. Any member state may refer to the Commission’s decision to the Council within a certain time limit to be determined in the act in question. Like all the other procedures, this procedure also has two variants.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

“According to variant (a), the Council may take a different decision if it acts by qualified majority within a certain time limit determined in the main act. Under variant (b), the Council may, by qualified majority, confirm, amend or revoke the decision of the Commission within a certain time limit. If, within this period, the Council has not acted, the Commission decision is deemed to be revoked”.⁶⁰

Although it was an important step in terms of facilitating the decision-making process within the Community, the Comitology Decision failed to reach the expected result. Especially, the Parliament and the Commission were concerned regarding the existence of regulatory committee procedure. Right after the Comitology Decision was adopted, the Parliament questioned the validity of the Decision before the European Court of Justice. However, it was an unsuccessful attempt. Following this, the Parliament made a formal request to the Commission. According to this request, the Commission would inform the Parliament of all Commission proposals submitted to advisory, management or regulatory committees. This request resulted in the adoption of the “Plumb-Delors Agreement”.⁶¹ According to this agreement, it became the Commission’s obligation to forward all draft measures, which were referred to committees, to the Parliament. One exception to these measures was the exception of routine management documents of limited period of validity or of minor importance, and proposals which had secrecy and urgency.⁶²

If practiced properly, the Plumb-Delors Agreement could have been efficient. However, because the Commission forwarded very few documents, and the Parliament could not enforce this agreement, the agreement lost its efficiency.

⁶⁰ *Ibid.*

⁶¹ G.C. Azzi. (1999). Comitology and the European Commission. In: Christian Joerges and Ellen Vos (Eds.) *EU Committees: Social Regulation, Law and Politics*. Oxford: Hart Publishing, p. 54.

⁶² E. Vos. (1999). EU Committees: The Evolution of Unforeseen Institutional Actors in European Product Regulation. In: Christian Joerges and Ellen Vos (Eds.) *EU Committees: Social Regulation, Law and Politics*. Oxford: Hart Publishing, p.24.

The Treaty of Maastricht provided another opportunity for the Parliament. According to the Treaty, the Parliament was given co-legislative powers under a co-decision procedure (under Article 100a).

As a result of this, the Parliament argued that the Comitology Decision- Article 145 third indent EC- did not apply to measures adopted jointly by the Parliament and the Council, but to acts adopted by the Council.⁶³

The situation was moving towards a deadlock, because after having co-legislative powers, the Parliament started to reject the Commission proposals for joint Parliament and Council Directives under Article 100a EC. Realizing the seriousness of this inter-institutional debate, the Commission, in order to solve this issue, presented a proposal for an inter-institutional agreement. As a result of tough negotiations, in December 1994, a Modus Vivendi was signed and ratified by the Parliament, the Council and the Commission in April 1996. The Modus Vivendi is very important in the sense that it has enabled the Parliament greater access to information regarding Community issues.⁶⁴

2.1.2 New Comitology Decision

Although the Commission has taken several initiatives on the matter, the Intergovernmental Conferences in 1996 and 1997 did not take the comitology issue as the Commission preferred. Instead, at the end of the IGCs, a declaration was attached to the Final Act in Amsterdam and asked the Commission to submit a proposal amending the 1987

⁶³ *Ibid.*

⁶⁴ G.C. Azzi. (1999). Comitology and the European Commission. In: Christian Joerges and Ellen Vos (Eds.) *EU Committees: Social Regulation, Law and Politics*. Oxford: Hart Publishing, p. 54.

Comitology Decision. In response, the Commission has prepared a proposal for a new comitology decision in July 1998.⁶⁵

This development led to another problem; a legal limit. The Commission wanted to create a new Comitology decision, but for this to be done, former Article 202 (former Article 145) was not amended. Therefore, the Commission had to prepare a careful text that would take into consideration the institutional balances within European Union.

Parallel to these events, just as prior to the 1987 Comitology Decision, the Parliament followed a similar strategy; it had played a major role during the negotiation processes

“by blocking half of the appropriations available for committees in the 1999 budget and delaying its opinion until the last legislative session. By this way, the Parliament made its position apparent. As a result, after the negotiation process that lasted for a year, the Council adopted the new Comitology Decision unanimously, in June 1999”.⁶⁶

According to this new Decision;

“The Parliament was given a right of scrutiny over the executive institutions. The Commission will keep informing the Parliament about the draft measures. The variants that were in 1987 Decision, were taken off and therefore the new Decision was simplified”.⁶⁷

The EU Committees are important parts of European Governance. For many years, before the inclusion of other actors such as the public opinion, Committees carried all the workload, especially in the absence of a European Government. The Comitology Decisions tried to create a balance between the institutions, in order to better facilitate the policy-making and implementation within the Community.

Whether Comitology has fulfilled its facilitating role or not is another question. The 1987 and the 1999 decisions tried to create a framework for committee procedures. On the

⁶⁵ J.P. Jacques.(1999). Implementing Powers and Comitology. In: Christian Joerges and Ellen Vos (EdS.) *EU Committees: Social Regulation, Law and Politics*. Oxford: Hart Publishing, p. 69.

⁶⁶ G.C. Azzi. (1999). Comitology and the European Commission. In: Christian Joerges and Ellen Vos (Eds.) *EU Committees: Social Regulation, Law and Politics*. Oxford: Hart Publishing, p. 55.

⁶⁷ *Ibid.*

other hand, in the White Paper on European Governance and again in the December 2002 Communication on Institutional Architecture, the Commission called for reform of the comitology procedures. The Commission argued that the objective of refocusing the institutions as well as increasing efficiency justify reducing, if not eliminating, the use of existing management and regulatory procedures. It also called for the "rebalancing and strengthening the possibility for Parliament and the Council to control the Commission's exercise of its implementing powers," at least in the areas subject to co-decision.⁶⁸ In the Report on European Governance published on 11 December 2002, the Commission proposed to amend the 1999 Comitology Decision by:

“revising the existing regulatory procedure, for implementing measures under enabling legislation adopted by co-decision, by introducing two distinct phases: an "executive phase" which is similar to advisory committee procedures; and a "control phase" where, the Commission's draft measures are considered by both the Parliament and Council; complementing the regulatory procedure with an "urgency procedure" allowing the Commission to adopt implementing measures before the legislators' controls take place”.⁶⁹

The Council and the Parliament argue that especially with “urgency procedure”, the Commission tries to widen its role in decision-making and executive powers. The White Paper supports that legislation by the Council and the Parliament should be restricted to general issues, while the details and the specific issues should be under the Commission’s responsibility. The proposal also aims to limit the role of comitology, in other words it tries to limit the Council's current control mechanism over Commission. The Parliament has long complained about not being a participant in the comitology procedures. Having limited influence on the committee procedures, the Parliament wants to restrict the delegation of

⁶⁸ Commission Proposes Reform on Comitology Procedures.(13 December 2002). *EurActiv*. Retrieved: April 2005. <http://www.euractiv.com/Article?temuri=cm:29-113831-16&type=News> .

⁶⁹ *Ibid*.

implementation measures to the Commission to purely routine measures. There are calls to ensure the role of the Parliament as co-legislator in procedures of legislative oversight.⁷⁰

“Despite the efforts to enhance the transparency and openness of comitology procedures since 1999, many academic and political commentators argue that comitology is a clear demonstration of an EU democratic deficit since decisions are referred to a small panel of people who are not directly elected”.⁷¹

Georg Haibach argues that the chances of survival for the 1999 Comitology Decision is higher than the 1987 decision. Furthermore, Haibach points out that somehow or another the Union’s survival depends on a solid system of cooperation between the institutions. Keeping this in mind Haibach proposes that;

“...But the experience of the last 40 years seems to suggest that the adoption of the new Decision is not very likely to end the power struggle of the institutions over comitology – after all the new Decision does not confer the control of the Commission’s executive activity equally on the Parliament and Council. Maybe the new Decision will be the beginning of a new era of comitology, in which rather than disagreeing over the fundamental issues, the institutions will struggle over the scope of implementing powers and the content of implementing legislation in specific cases”.⁷²

Without a doubt, comitology is a phenomenon which was initially created to improve governance in EU. On the other hand, its complexity further heated the debate on power struggle among the institutions, rather than creating a balance. In addition, the failure of comitology has demonstrated that governance cannot only be defined through participation of institutions. European Governance requires a truly multi stakeholder approach that involves national, local actors as well as citizens.

⁷⁰ Comitology. (11 June 2003). *EurActiv*. Retrieved: April 10, 2006.

<http://www.euractiv.com/Article?tcmuri=tcm:29-117454-16&type=LinksDossier> .

⁷¹ *Ibid*.

⁷² Dr. G. Haibach. Council Decision 1999/468- A New Comitology Decision for the 21st Century? European Institute of Public Administration. Retrieved: May 11, 2006.

http://www.eipa.nl/cms/repository/eipascope/scop99_3_2.pdf, p. 8.

2.2 Governance at Local Level

2.2.1 Getting Closer to Citizens: Principle of Subsidiarity

The complexity of the comitology system created a question mark on the faith of European Governance. For many years, policy-makers of EU focused on an intergovernmental and then later a supranational approach of governance. Since the Union had no government and was to be somehow governed; the assumption was that if good governance was realized among EU institutions and since policy-makers and implementers in these institutions were representatives of the member states, then European Governance would become a successful system. Therefore, the initial aim was to create a balance of power between the institutions, through comitology. However, the experience of comitology mostly brought nothing but more bureaucracy and paperwork. Clearly, the success formula for European governance was not only hidden in the harmony of the institutions.

These developments and concerns resulted in the realization of a principle which was left aside for a few decades. The 1990s witnessed the rise of subsidiarity principle. For years, the union was stuck in methods such as comitology and supranational approaches. The problem here is not only focusing on a supranational approach, but not realizing that supranational governance is not only composed of supranational institutions as stakeholders, but also, national, regional and local authorities as well as citizens. Between the trends of internationalization, supranationalism and localization, the best form of governance is to find the balance.

For this purpose, it is essential to study the role of subsidiarity principle and its impact on local authorities in European Union.

Subsidiarity is a concept which was first defined on the Catholic thought.

“In 1931 the principle of subsidiarity was definitively pronounced by Pope Pius XI in his encyclical, *Quadragesimo Anno*. It simply states that a higher entity in the social order may not do for the lower order what it is capable of doing for itself”.⁷³

The usage of subsidiarity intended here follows a similar logic but is used for legal and political purposes. Looking from this perspective, the principle is defined as

“decisions should not be made at higher level when they might equally be taken at subsidiary level. What it entails precisely is dependent upon the legal and political circumstances in which its practice is thought appropriate; there may be significant gradation between those ‘higher’ and ‘lower’ levels; and the principle must not be conflated with simple reservation of decision-making powers at base level.”⁷⁴

Looking at EU perspective, the principle encourages stakeholders at national and local level to assume responsibility for issues and policies which may be solved and implemented by their active participation on the necessary mechanisms.

The principle was widely considered as a political one until 1993. However, it has gained a legal identity when it was “inserted into the Treaty establishing the European Community (TEC) by the Maastricht Treaty on European Union (TEU) that entered into force in 1993”.⁷⁵

The First Article of TEU clearly indicates the shift of policy towards subsidiarity:

“This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen”.⁷⁶

This opening article of the treaty shows the determination of EU to create a union which is transparent and participatory.

The Maastricht Treaty also inserted another article to TEC concerning the principle of subsidiarity. Article 5 TEC (3b TEU) is as follows:

⁷³ The Principle of Subsidiarity. *Kolbe Academy Home School*. Retrieved: May 11, 2006.

<http://www.kolbe.org/files/Articles/Principle%20%20subsidiarity.pdf>, p. 1.

⁷⁴ Subsidiarity: A Preliminary Discussion Paper. (October 2003). *British Institute of International and Comparative Law*. Retrieved: March 22, 2006. http://www.senliscouncil.net/documents/BIICL_subsidarity, p. 1.

⁷⁵ Discussion Paper on Subsidiarity: Part 1. (25 May 2004). *Subrosa*. Retrieved: March 22, 2006.

<http://www.scotlandeuropa.com/PUBLIC%20SITE/subrosa/SRSubsid2004EN.pdf>, p. 4.

⁷⁶ *Ibid.*

“The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein. In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty”.⁷⁷

This article indicates that the Community shall only take action for those matters which cannot be handled by the Member States.

Following the Maastricht Treaty, another key development regarding the principle of subsidiarity is the 1997 Amsterdam Protocol on Subsidiarity and Proportionality. Article 5 of this protocol gives a more detailed definition of when Commission takes action:

“For Community action to be justified, both aspects of the subsidiarity principle shall be met: the objectives of the proposed action cannot be sufficiently achieved by Member States' action in the framework of their national constitutional system and can therefore be better achieved by action on the part of the Community.

The following guidelines should be used in examining whether the abovementioned condition is fulfilled: the issue under consideration has transnational aspects which cannot be satisfactorily regulated by action by Member States; actions by Member States alone or lack of Community action would conflict with the requirements of the Treaty (such as the need to correct distortion of competition or avoid disguised restrictions on trade or strengthen economic and social cohesion) or would otherwise significantly damage Member States' interests; action at Community level would produce clear benefits by reason of its scale or effects compared with action at the level of the Member States.”⁷⁸

Furthermore, Article 6 of the Protocol underlines the form of Community action as follows:

“The form of Community action shall be as simple as possible, consistent with satisfactory achievement of the objective of the measure and the need for effective enforcement. The Community shall legislate only to the extent necessary. Other things being equal, directives should be preferred to regulations and framework directives to detailed measures. Directives as provided for in Article 189 of the Treaty, while binding upon each Member State to which they are addressed as to the result to be achieved, shall leave to the national authorities the choice of form and methods”.⁷⁹

⁷⁷ The Maastricht Treaty, Provisions amending the Treaty establishing the European Economic Community with a view to establishing the European Community. (7 February 1992). Article 5. 3.

<http://www.eurotreaties.com/maastrichtec.pdf>

⁷⁸ Appendix 2: Text of the Treaty Article and the Amsterdam Protocol on the Application of the Principles of Subsidiarity and Proportionality. *The United Kingdom Parliament*. Retrieved: April 21, 2006.

<http://www.publications.parliament.uk/pa/ld200506/ldselect/ldcom/66/6605.htm>

⁷⁹ *Ibid.*

The logic behind these articles is to call upon the Commission to create a wide-range of pre-legislative consultation process and to minimize the burden by allocating the responsibilities to the stakeholders.

It is also important to emphasize that these articles are operational for Community matters. For example, on matters regarding civil or criminal law, the Commission does not consider principle of subsidiarity as valid.

On the other hand, the Constitutional Treaty expands this range to wider level of policy issues and empowers national Parliaments with a new system to contest a legislative proposal.

“The Constitutional Treaty establishes that national Parliaments shall ensure that EU-legislation complies with the principle of subsidiarity. A new so-called "Early warning system" is proposed to allow a national Parliament or a chamber of a Parliament to contest a legislative proposal with regard to its compliance with the subsidiarity principle. The system empowers national Parliaments to demand that the Commission reviews a proposal if at least 1/3 of the Parliaments submit a reasoned opinion to the Commission within six weeks after the proposal's transmission”.⁸⁰

Furthermore, Article 1 of the Protocol of the Constitutional Treaty on the Application of Principles of Subsidiarity and Proportionality emphasize the importance for “each institution to have constant respect” for these principles.⁸¹

The Protocol also underlines in Article 2 that “before proposing European legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged. In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for its decision in its proposal.”⁸²

All these documents underline the fact that in carrying out tasks, a balance of power should be maintained with the Union and the Member States. Principle logic of the founding treaties indicates that EU may only act where the Member States have expressly conferred

⁸⁰ Subsidiarity Control in National Parliaments. *COSAC*. Retrieved: April 14, 2006.

<http://www.cosac.org/en/info/earlywarning>

⁸¹ Protocol on the Application of the Principles of Subsidiarity and Proportionality. European Commission. Retrieved: April 14, 2006.

http://europa.eu.int/eur_lex/lex/LexUriServ/site/en/oj/2004/e_310/c_310200412116en02070209.pdf, p. 1.

⁸² *Ibid.*

upon it the power to do so. These developments lead to the one question that this thesis is concerned about: Do local authorities benefit from the principle of subsidiarity? Can this principle improve local governance in EU or do these developments only serve to the interests of national governments?

Although at first it may seem that the arrows point the national Parliaments and governments as the sole beneficiary of subsidiarity principle, it actually may not be the case. The rise of subsidiarity principle also had a positive impact on the role of local authorities and local governance in EU. Especially after Maastricht Treaty, local authorities were encouraged to take action towards getting more involved in policy-making and implementation of EU. They started to give more importance on lobbying and making their voices heard on legislative issues. They highlighted the significance of local governance for sustainable development and worked on Local Agenda 21 programs to involve citizens on decision-making mechanisms. They promoted the idea that the subsidiarity principle does not merely mean a way to give nation-states back all the power the Union has, but a mean to identify the best level for legislative and administrative processes. Sometimes, that best level was the local level.

During the 2006 Subsidiarity Conference “Europe Begins at Home”, the declaration of the Chair highlights the approach that the Union would like to follow. This Declaration clearly shows the Union’s intention to involve citizens and local authorities in European Governance. Much emphasis is given on the Commission’s responsibility to involve citizens and local authorities on drafting legislative proposals. Furthermore, the Declaration points out that the citizens are alienated from the European legislative process and the legal system and invites the Commission to work on raising public awareness on these issues.

2.2.2 The Role of Local Authorities in Governance

As mentioned before, the role of local authorities in European Governance became apparent especially after the 1992 Maastricht Treaty. Already organized in a Council of European Municipalities and Regions, most of the local authorities in EU accelerated their work on promoting the importance of local governance, not only for sustainable development but also for sustaining the European Union as well.

The responsibilities of local authorities for promoting European Governance are defined in the preamble of European Charter of Local Self-Government:

“...Considering that the local authorities are one of the main foundations of any democratic regime;
Considering that the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe;
Considering that it is at local level that this right can be most directly exercised;
Convinced that the existence of local authorities with real responsibilities can provide an administration which is both effective and close to the citizen;
Aware that the safeguarding and reinforcement of local self-government in the different European countries is an important contribution to the construction of a Europe based on the principles of democracy and the decentralisation of power...”⁸³

Apart from these points, the Charter also defines the concept, the scope, constitutional and legal foundation for local-self governments. The Charter entered into force in 1988 and has become one of the founding documents for local authorities to rely upon when promoting the importance local governance for European Union.

The European Charter on Local Self-Government was followed by the 1994 Charter on European Cities and Towns towards Sustainability, widely known as the Aalborg Charter.

The Charter is basically divided into three parts;

1. Consensus Declaration,
2. European Cities and Towns towards Sustainability Campaign

⁸³ The European Charter of Local Self-Government. (1988). *University of Minnesota, Human Rights Library*. Retrieved: April 17, 2006. <http://hei.unige.ch/humanrts/euro/ets122.html>

3. Engaging in Local Agenda 21 Processes: Local Action Plans Towards Sustainability.⁸⁴

In the first part of the Charter, it is emphasized that cities and towns are governing systems which are closest to citizens. Probably for this reason, they have “...outlasted empires, nation states, regimes and have survived as centers of social life”.⁸⁵

In the first part, it is also underlined that;

“...Local government is close to where environmental problems are perceived and closest to the citizens and shares responsibility with governments at all levels for the well-being of mankind and nature. Therefore, cities and towns are key players in the process of changing lifestyles, production, consumption and spatial patterns”.⁸⁶

With this Charter, the local authorities also focus on local governance as a pre-condition to sustainable development. In Part I.12 of the Charter, local authorities declare that;

“We, cities and towns, are confident that we have the strength, the knowledge and the creative potential to develop sustainable ways of living and to design and manage our cities towards sustainability. As democratically elected representatives of our local communities we are ready to take responsibility for the task of re-organising our cities and towns for sustainability. The extent to which cities and towns are able to rise to this challenge depends upon their being given rights to local self-governance, according to the principle of subsidiarity. It is essential that sufficient powers are left at the local level and that local authorities are given a solid financial base”.⁸⁷

With this article, the local authorities openly announce their confidence and at the same time their commitment on sustainable development. It is important to notice two phrases; the first one is that local authorities underline that they are “ready to take responsibility”, and secondly they can face this challenge if they are “given rights to local self-governance, according to the principle of subsidiarity”. This is a clear message to the Union and the Member States.

⁸⁴ Charter of European Cities and Towns Towards Sustainability. (1994). *European Commission*. Retrieved: April 17, 2006. http://www.europa.eu.int/comm/environment/urban/pdf/aalborg_charter.pdf

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ *Ibid*, p. 4.

Another dimension of the Charter is its reference to 1992 Earth Summit in Rio and emphasize the importance of developing Local Agenda 21 plans, in order to ensure the involvement of all stakeholders, including citizens, for active participation in local decision-making mechanisms.

The Second part of the Charter focus on the initiation of a “European Cities and Towns towards Sustainability Campaign”, the principal activities of the campaign are to;

“facilitate mutual support between European cities and towns in the design, development and implementation of policies towards sustainability;
 collect and disseminate information on good examples at the local level; promote the principle of sustainability in other local authorities;
 recruit further signatories to the Charter; organise an annual "Sustainable City Award"; formulate policy recommendations to the European Commission;
 provide input to the Sustainable Cities Reports of the Urban Environment Expert Group; support local policy-makers in implementing appropriate recommendations and legislation from the European Union.”⁸⁸

The third part of the Charter declare that the main objective of this campaign is to achieve a consensus among local authorities on the initiation and development of Local Agenda 21 Programs by the end of 1996. Several proposals are laid down to guide local authorities for creating local action plans such as:

“recognition of the existing planning and financial frameworks as well as other plans and programmes;
 the systematic identification, by means of extensive public consultation, of problems and their causes;
 the prioritisation of tasks to address identified problems;
 the creation of a vision for a sustainable community through a participatory process involving all sectors of the community; the consideration and assessment of alternative strategic options;
 the establishment of a long-term local action plan towards sustainability which includes measurable targets; the programming of the implementation of the plan including the preparation of a timetable and statement of allocation of responsibilities among the partners;
 the establishment of systems and procedures for monitoring and reporting on the implementation of the plan”.⁸⁹

⁸⁸ *Ibid*, p. 5,6.

⁸⁹ *Ibid*, p. 7.

Special emphasis is given to identifying problems through public consultation, and making long term sustainable development plans with a participatory process.

The decisions taken at the Aalborg Charter signifies the will and motivation of local authorities to become influential in the Union by developing Local Agenda 21 plans which basically serve to the purpose of making local governance an inevitable part of European governance.

The follow-up meeting of the Aalborg Conference was conducted in 1996 in Lisbon. More than a thousand representatives of local and regional authorities convened in the 2-day conference in order to share best practices and experiences since the declaration of Aalborg Charter. The Charter was first signed by 80 European Municipalities and in 2 years time this number raised up to 250. Besides, the participants found the opportunity to learn about the status of Local Agenda 21 processes in 35 European countries. The representatives stressed that the increasing number of authorities adopting Local Agenda 21 show the determination of local authorities to become key actors for governance and sustainable development.

The Lisbon Conference also called for the continuation of the European Cities and Towns towards Sustainability Campaign. The first phase of the campaign was primarily devoted to spreading the word about local sustainability by promoting the Aalborg Charter, urging further local authorities to sign the Charter and join the Campaign, and providing guidance on the Local Agenda 21 process. The next phase launched at the Lisbon Conference will focus on implementing the principles set out in the Charter, starting and undertaking a Local Agenda 21 process, and implementing the local sustainability plan. By engaging in this phase, European local authorities shall contribute to the implementation of not only the Agenda 21, but also the Habitat Agenda .⁹⁰

⁹⁰ The Lisboa Action Plan From Charter to Action. *Bremen Initiative*. Retrieved: March 8, 2006. http://www.bremen-initiative.de/lib/background/lisboa_action_plan.pdf

In addition, the Lisbon Action Plan defines the role of local authorities in Local Agenda 21 processes. According to the plan, as the governing system which is closest to citizens, local authorities must take a facilitative role in the implementation of Local Agenda 21. As the main facilitator, the primary task of local authorities is underlined as facilitating the involvement of the entire local community. Furthermore, the Action Plan creates a framework for facilitation. According to this framework, for a successful process of facilitation, local authorities need to create strategies for involving the community, establish strong networks, give importance to consultation and cooperation, come up with training programs for raising awareness and use advanced tools for sustainability management.

A final point to emphasize regarding the Lisbon Action Plan is that the plan recommends the creation of a Local Agenda 21 Forum. This Forum would bring together a stakeholders group with an aim to “build partnerships for concrete projects with clear objectives, form project working groups, task forces, advisory groups or round tables, outline the process and seek agreement on the procedure, the stages of the process, and the objectives”⁹¹.

With the turn of the 21st century, local authorities in Europe convened again in Hannover. The “Hannover Call of European Municipal Leaders at the Turn of the 21st Century”, highlights key issues and calls for multiple stakeholders to take responsibility for local governance and sustainable development. They first call upon the international community to strengthen their support for the implementation of Local Agenda 21 programs. Furthermore, they call upon the European institutions “to encourage and ensure local self-government in all European countries, and to respect the principle of subsidiarity in all

⁹¹ *Ibid*, p. 2.

European Community actions”.⁹² In addition, in D. 2(e) of the Call further asks the European Commission “to develop, jointly with local government associations and networks, a culture of partnership between the European Commission on the one side, and local authorities and their associations on the other side, which reflects the principle of subsidiarity”.⁹³

The local authorities also call upon the national governments to support local sustainable development by creating policy frameworks and to recognize cities and regions as valid partners for sustainable development projects implemented at international level.⁹⁴ With this call, the local authorities aim to attract the attention of international community, EU and the national governments on the increasing role of local authorities for sustainable development and governance.

Furthermore, Hannover Call encourages other local authorities in Europe to become part of the process by signing the Aalborg Charter, developing and implementing Local Agenda 21 Action plans for sustainable development. In addition, the Call also asks for other stakeholders such as private sector, to become active participants for the formation and implementation of Local Agenda 21 action plans, and promote local governance.⁹⁵

It is important to emphasize that with Hannover Call, local authorities define new opportunities they have for promoting local governance and strengthening their role in EU at the turn of the 21st century. The two opportunities defined in the Call are worth mentioning to highlight possible strategies of local authorities for becoming active stakeholders in European Governance:

“(a)The European integration, in particular, the enlargement of the European Union by

⁹² The Hannover Call of European Municipal Leaders at the Turn of the 21st Century. *Bremen Initiative*. http://www.bremen-initiative.de/lib/background/hannover_call1.pdf, p.4.

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

countries of Central and Eastern Europe, and the EU-Mediterranean policy, present major opportunities for European cities. By re-defining their role in a wider Europe, moving towards compliance with the European Union legislation and becoming multi-cultural, cities will improve their competitiveness and become more sustainable and attractive places.

(c) The proposal by the European Commission for a community framework for cooperation to promote sustainable urban development (COM[1999]557 final) presents a good basis for continued Commission support to the European Sustainable Cities & Towns Campaign, which should continue to be coordinated by associations and networks of local authorities in cooperation and partnership with the Commission".⁹⁶

Another key issue that local authorities point out in the Hannover Call is the obstacles they face towards fulfilling their objectives. A major obstacle is defined as weakness of local authorities in some of the European Countries. For this reason, it is emphasized that although local authorities are given inadequate resources for implementation, they are given a lot of responsibilities which oftentimes create problems in management. This further leads to distrust towards local authorities among public and damages the position local authorities try to strengthen in EU. Therefore, local authorities give utmost importance to adequate allocation of resources for local governments.

Following the Hannover Call and before the 2002 Johannesburg Summit of Sustainable Development, representatives of local authorities were convened to declare the Johannesburg Call. In essence, the Call is not different from the previous calls made by local authorities. Emphasis on implementing Local Agenda 21s for governance and sustainable development is underlined. In addition, local authorities call upon the national governments and the international community to politically and legally support local governments and declare this during the Summit. The Report of the UN Secretary-General, which was mentioned in the previous chapters, defines Local Agenda 21s as a success and underlines the importance of supporting local governments to reach sustainable development.

⁹⁶ *Ibid.*

Without a doubt, the Aalborg Charter and the follow-up meetings are major developments for local governments to declare their commitment and motivation for sustainable development and good governance. They strongly argue that good governance cannot be possible without active participation of local governments in the process. The Conferences and Calls in the last decade are solid steps to realize this objective. More than 650 local governments signed the Aalborg Charter and local authorities working towards sustainable development and good governance represent a population of more than 130 million citizens of Europe. The numbers increase each year and local authorities become stronger actors in EU.

On the other hand, it would not be realistic to assume that local authorities would realize their objective solely by creating a charter and signing it or by organizing campaigns. Without a doubt, these activities are important parts of lobbying, but nevertheless, local authorities need a solid ground for pursuing their objectives. The Committee of Regions assumes this role.

Maastricht Treaty clearly expressed the need for decisions to be taken closest to the citizens as possible. The Committee of Regions (CoR) was established in 1994 mainly for this reason. In addition, considering the fact that more than 70 % of EU legislation is implemented at local and regional level, it is important to create an assembly composed of local and regional authorities where opinions regarding draft legislation can be given. The Committee is “an advisory body which plays a complementary role in the decision-making process between the Commission, Parliament and the Council of the European Union”.⁹⁷

When it was first established in 1994, the Committee did not have an autonomous role; its rules of procedure had to be approved by the Council. In 1999, with Amsterdam Treaty entering into force, the Committee gained an autonomous structure and the right to create its own rules of procedure. The 317 members of the Committee represent the entire local and regional governments in European Union.⁹⁸ The Maastricht and Amsterdam Treaties put obligations on the Council and the Commission to consult the Committee of Regions whenever there exist new proposals which may have effects on local and regional level. Economic and social cohesion, education, culture, health, and trans-European infrastructure networks are main areas for consultation, which was determined in the Maastricht Treaty.

Furthermore, with Amsterdam Treaty, employment policy, social policy, environment, vocational training and transport are also added as main issues which will be in the scope of Committee consultation.

In addition, if the Commission and the Council evaluate that there is a legislation which may have repercussions on local and regional level, they have the option to consult the Committee of Regions. On the other hand, even if the Commission or the Council does not use this option, the Committee of Regions may use its own initiative to submit an opinion on an issue or legislation.⁹⁹ The opinions are shaped by the special commissions created within the Committee. The six commissions prepare draft opinions and resolutions to be submitted at the Plenary Sessions. These drafts are evaluated and amended if necessary during the session

⁹⁷ Committee of the Regions. *Midland Regional Authority*. Retrieved: April 17, 2006.

http://www.midlands.ie/content/6eu/6_13.htm

⁹⁸ *Ibid.*

⁹⁹ The Committee of the Regions: An Introduction. *CoR*. Retrieved: April 17, 2006.

<http://www.cor.europa.eu/en/presentation/Role.htm>

and then adopted. Among these six commissions, the major task of the Commission for Constitutional Affairs, European Governance and the Area of Freedom, Security and Justice (CONST), is to prepare draft opinions especially on issues of governance. So far, the Commission drafted opinions mainly on issues such as better law making, constitutional treaty, the principle of subsidiarity and proportionality. In each opinion, the Committee strongly supports and welcomes decisions towards improving European governance and stresses the importance of local and regional governments in achieving and implementing good governance principles.

Another important action that CoR has taken to contribute to governance is the adoption of code of good administrative behaviour. The code is prepared to improve transparency and openness, which was initially emphasized with the Amsterdam Treaty and later further defined in Article 41 of the Charter of Fundamental Human Rights of the European Union. According to this article;

“Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

This right includes: the right of every person to be heard, before any individual measure which would affect him or her adversely is taken; the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy; the obligation of the administration to give reasons for its decisions.

Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language”.¹⁰⁰

In the light of the Charter, the Code is adopted for defining the framework of good administrative behaviour, which may be applicable for all European institutions and be accessible to public all the time. The adoption of the Code is another fundamental development to realize the principles of good governance in Europe.

¹⁰⁰ Charter of Fundamental Human Rights of the European Union. *European Parliament*. Retrieved: April 19:2006. http://www.europarl.europa.eu/charter/pdf/text_en.pdf, p. 18.

Especially in the last decade, local governments in Europe are going under major transition towards establishing local governance model. Peter John argues that there several dimensions of change from local government to local governance:

FIGURE 2.2 Local Governments and Governance Contrasted¹⁰¹

	Government	Governance
1. Number of Institutions	Few	Many
2. Bureaucratic Structure	Hierarchical	Decentered
3. Horizontal Networks	Closed	Extensive
4. International Networks	Minimal	Extensive
5. Democratic Linkage	Representative	Representative
6. Policies	Routinized	Innovative
7. Central Government	Direct Control	Decentralizes
8. Leadership	Collegial	Mayoral

This transition takes place parallel to the changes in the European Union in terms of governance.

As mentioned earlier, this chapter aims to focus on how EU needs to adopt new and more realistic approaches to its understanding of governance. Beginning from 1990s EU policy makers realized that the Union should be closer to its citizens, and created policies and legislation that serves this purpose. The principle of subsidiarity and the growing impact of local authorities become important elements of European governance. But will Europe

¹⁰¹ Peter John. (2001). *Local Governance in Western Europe*. London: Sage Publications, p. 17.

succeed in its ambition to have good governance? Will local governance be truly accepted as an inevitable part of European governance or will it be undermined in the power struggle between the institutions and the national governments? These questions may find their answers through an analysis of the future of European Governance.

III. EUROPEAN GOVERNANCE IN THE NEW MILLENIUM

Since the beginning of its formation, the European integration has brought fundamental changes to the old continent. Through democracy, rule of law and emphasis on human rights, Europe enjoyed decades of political, social and economic stability. During this era, the range of policy-making at the Union level has increased and deepened.¹⁰² On the other hand, the increasing level of policy-making raised new questions on how European integration must be perceived. Especially after the 1990s, European integration was no longer considered only as a shift of power from states to a supranational organization, but a process that involves other stakeholders which are effected by these shifts. Europe may enjoy stability but it is also true that many Europeans feel alienated in this process.¹⁰³ This alienation is the result of a communication gap between the citizens and the institutions. The gap is observed by the academics and policy makers. Therefore, as a complementary to the majority of integration theories which are mainly state-centric¹⁰⁴, governance comes as a fresh approach to fill this communication gap.

For many years, the Union was mainly concerned about creating a system where institutions could cooperate instead of struggling for power. As the Union was trying to fulfill this objective, it missed a crucial point which its main foundation was built upon: the citizens themselves. EU has always emphasized democracy, human rights and rule of law as its founding principles. On the other hand, the Union got lost in the power struggle of the institutions and dismissed the fact that legislation system became more and more complicated

¹⁰² G. Marks. (September 1996). European Integration from the 1980s: State-Centric v. Multi-Level Governance. *Journal of Common Market Studies*. Vol. 34 No:3, p. 342.

¹⁰³ White Paper on European Governance. *European Commission*. Retrieved: July 27, 2005.
http://europa.eu.int/comm/governance/governance_eu/white_paper_en.htm

¹⁰⁴ M. Jachtenfuchs.(June 2001). The Governance Approach to European Integration. *Journal of Common Market Studies*. Vol. 39 No: 2, p. 256.

for citizens to comprehend. As a result of this complexity, many citizens in Europe can not follow the developments on policy-making in the Union, because they are not involved in either this process or the decision-making and implementation processes. On the other hand, they are effected by these developments. Therefore, the whole process has a top to bottom approach and is in contradiction with the principle of democracy.

The gap between the Union and its citizens create a serious risk towards its sustainability. In the past two decades, actions such as the adoption of subsidiarity principle, the increasing role of local authorities and promoting good governance helped to reduce the gap and started to minimize the risk to a certain extent. However, the key issue of discussion is to create a constancy and set up a solid framework for European governance.

Beginning from the 21st century, the Union has taken some major steps regarding this issue. These steps are evaluated in this chapter for setting a clearer picture on the future of European Governance.

3.1 Nice Treaty

Following the SEA, the Maastricht and the Amsterdam Treaties; Nice Treaty of 2001, is the fourth treaty created by the Union aimed at defining the Union as an area of freedom, security and justice. The Treaty has been established as an end result of the Intergovernmental Conference (IGC), which focused on the institutional reforms that the Union must go through during the enlargement process. The Treaty came into force in 2003

after being ratified by the national parliaments. With Nice Treaty, Member States reached agreement on key points such as, enhanced cooperation, the scope of qualified majority voting, and protocol on enlargement of the Union. The Treaty is important in the sense that it has defined the new face of the Union when the next enlargement process comes to a conclusion in 2005.

What is more essential regarding governance is that apart from the Treaty, during the Nice Summit, the Member States created the Charter of Fundamental Human Rights of the European Union. The first paragraph of the Preamble points out the importance of the Charter:

“The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values”.¹⁰⁵

One may question the necessity of creating such a Charter, when there are many documents in Union law regarding citizen rights. This is true, but unfortunately, the issue of complex legislation comes to surface once again. Noriko Yasue supports this argument:

“... it was necessary to put together diverse forms of sources of law that the EC/EU has utilized for the protection of fundamental rights. We can find numerous documents using such expressions as ‘visible rights for the citizens’ repeatedly. Most of the rights listed in the Charter are stipulated or confirmed by the institutions of Member States, derivative EU law, case law, several international conventions and so on. However, the ways of using these sources of law in the EC/EU treaties has been not only inconsistent but also confused. For the citizens, it seems to be very obscure. The fundamental rights must be presented in a clear manner, even if the institutions of the EU can protect them without the Charter”.¹⁰⁶

¹⁰⁵ Charter of Fundamental Human Rights of the European Union. *European Parliament*. Retrieved: March 26, 2006. http://www.europarl.europa.eu/charter/pdf/text_en.pdf, p. 8.

¹⁰⁶ Noriko Yasue. (2003). Drafting the Charter of Fundamental Rights. In: Koji Fukuda and Hiroya Akiba (Eds.) *European Governance After Nice*. Routledge Curzon, London, p. 71.

3.2 White Paper on Governance

European Governance is first discussed openly in the White Paper on Governance. Before the White Paper, the concept of European Governance was either hinted at or its principles such as subsidiarity, transparency, rule of law, participation etc. were emphasized in the charters, protocols or treaties. Therefore, the adoption of the White Paper by the Commission in July 2001, was a milestone for European Governance.

The White Paper evaluates the rules, processes and the behaviour that have impacts on governance in Europe. For the first time, the Union openly defines how it perceives governance. Openness, participation, accountability, effectiveness and coherence are highlighted as the main principles.¹⁰⁷

Apart from the definition and the principles of governance, the White Paper also points out the problems that the Union faces. Four observations are worth mentioning, which explain the overall situation of European Governance:

“There is a perceived inability of the Union to act effectively where a clear case exists, for instance, unemployment, food safety scares, crime, the conflicts on the EU’s borders and its role in the world. Where the Union does act effectively, it rarely gets proper credit for its actions. People do not see that improvements in their rights and quality of life actually come from European rather than national decisions. But at the same time, they expect the Union to act as effectively and visibly as their national governments. Member States do not communicate well about what the Union is doing and what they are doing in the Union. “Brussels” is too easily blamed by Member States for difficult decisions that they themselves have agreed or even requested. Many people do not know the difference between the Institutions. They do not understand who takes the decisions that affect them and do not feel the Institutions act as an effective channel for their views and concerns”.¹⁰⁸

¹⁰⁷Koji Fukuda. (2003). Institutional Reform and European Governance. In: Koji Fukuda and Hiroya Akiba (Eds.) *European Governance After Nice*. RoutledgeCurzon, London, p. 64.

¹⁰⁸ White Paper on European Governance. *European Commission*. Retrieved: August 1, 2005. http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001_0428en01.pdf, p. 7.

These four observations clearly suggest the communication gap between the Union and its citizens as mentioned before. With the White Paper, the Union honestly admits that it does not act as effectively as it should on some major issues which causes loss of trust.

Maybe the most crucial observation of the White Paper is the fact that the citizens do not even know the role and the difference between the institutions. Just as the Laeken Declaration emphasized, the White Paper also highlights that due to the complexity of the whole legislative mechanism, the citizens can not comprehend how the decisions are taken and who takes them. In addition, the Union also fail in keeping its citizens well-informed about its work which further deepens the alienation.

In order to solve the problems that are pointed out, the White Paper contains a series of recommendations. Among these are the ways to enhance European democracy and legitimacy of the institutions. According to these recommendations, if the accountability of European executive bodies to the elected assemblies are increased and the Union's decision-making procedures allow citizens to participate in making decisions, then the European public would be more involved in policy making and implementation, which is one of founding principles of good governance.

The White Paper also sets out strategic priorities. Among these, better regulation, public opinion, participation of civil society and decentralization constitute important elements for European Governance.

3.2.1 Better Regulation

Good governance cannot be possible without a solid system of legislation which would include the principles of subsidiarity and proportionality. Especially since the Lisbon Summit in particular, European legislation has been perceived as a complex issue. In addition, the Lisbon conclusions emphasized the need to have new and more flexible regulatory approaches.

As mentioned previously, the impact of public opinion has become an essential factor in European Governance in the last decade. People nowadays take an interest “both in the effectiveness of the rules handed down "from Brussels" and in the way they are drawn up”.¹⁰⁹ As democratic conscience increase among public, so does the need for accountability and proportionality. Therefore, “Citizens of Europe” started to give more importance to the way European institutions exercise their powers and whether they do it within the framework of transparency and clarity.

In the process of preparing the White Paper, the Commission’s working group prepared a report to propose recommendations to improve Community regulation and its application. In this report, the Commission also underlined the principles of better regulation:

“Proportionality: regulation which achieves the stated public policy objectives without imposing unnecessary or disproportionate regulatory burdens;

Proximity: regulation which is recognisable to and recognised by stakeholders in the policy area concerned (because they have participated in the process, can understand the text and see its relevance for specific problems that they face, and/or feel some responsibility for it and its enforcement);

Coherence: regulation which fits in with other parts of the regulatory picture and not just in the same policy area, but across the board, producing synergies rather than conflicts;

Legal certainty: regulation which is clear and reliable in its legal effects (which for example does not require court cases to interpret and clarify) -which is not to say that everything needs to be the subject of legal certainty: this would be at odds with proportionality and is one of the sources of over-complexity;

¹⁰⁹ Better Lawmaking. *European Commission*. Retrieved: June 12, 2005.
http://europa.eu.int/comm/governance/governance_eu/law_making_en.htm

High standards: Community regulation which picks the solution offering the best protection for the public interest at stake, not just the one that represents the lowest common denominator of Member State positions;

Enforceability: regulation which is capable of achieving high levels of compliance, which is not just a question of designing surveillance mechanisms and sanctions, but is also the result of applying the proportionality and proximity principles correctly”.¹¹⁰

The working group’s report also included the creation of an action plan which should be presented to the Laeken European Council in December 2001.

Another key development that serves to promote governance and the creation of the Constitutional Treaty is the 2001 Laeken Summit. The Laeken Declaration on the Future of the European Union sets a clear road map towards establishing a unified Europe with its own constitution. The Declaration may be evaluated as an honest self-criticism of the Union regarding its relations with the citizens and also an attempt to come up with permanent solutions to problems that exist between them. The Declaration names these problems as “the democratic challenge facing Europe”.¹¹¹ Furthermore, the Declaration defines these challenges as follows:

“Within the Union, the European institutions must be brought closer to its citizens. Citizens undoubtedly support the Union’s broad aims, but they do not always see a connection between those goals and the Union’s everyday action. They want the European institutions to be less unwieldy and rigid and, above all, more efficient and open. Many also feel that the Union should involve itself more with their particular concerns, instead of intervening, in every detail, in matters by their nature better left to Member States’ and regions’ elected representatives. This is even perceived by some as a threat to their identity. More importantly, however, they feel that deals are all too often cut out of their sight and they want better democratic scrutiny”.¹¹²

¹¹⁰ Report of the Working Group on Better Regulation. (May 2001). *European Commission*. Retrieved: June 12, 2005.

http://europa.eu.int/comm/governance/areas/group5/report_en.pdf

¹¹¹ Laeken Declaration on the Future of the European Union. *Council of Europe*. Retrieved: June 12, 2005.

http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/68827.pdf, p. 20.

¹¹² *Ibid*, p. 21.

In this declaration, it is as if the Union creates an empathy with its citizens to assess the problems that the citizens live through. Furthermore, the Union gives a definition of good governance from the citizens' perspective:

“... what citizens understand by ‘good governance’ is opening up fresh opportunities, not imposing further red tape. What they expect is more results, better responses to practical issues and not a European superstate or European institutions inveigling their way into every nook and cranny of life”.¹¹³

In addition to defining the problems, the Declaration proposes solutions which may bring citizens closer to the Union. Referring to the complexity of the legislation, the Declaration calls for the simplification of Union instruments, which would help the improvement of transparency. On the issue of simplification, the Declaration goes further on, emphasizing that if the legislation is to be simplified and be made more transparent, than it means that the four founding treaties should also be simplified as well. The Declaration further argues that the simplification of the four treaties in the long term suggest the creation of a constitution. At that point, the Declaration states that the European Council has decided to convene a Convention on the future of Europe which may work on a draft constitution.

Another striking point in the Declaration is that it informs that apart from representatives of Member States, the Commission, the Council and the Parliament, the Convention will also be composed of representatives from Economic and Social Committee and the Committee of the Regions. This is especially important because, the Committees's participation suggests the possibility of good governance principles to find ground in the draft constitution. In addition, the CoR participation indicate that since its establishment about a decade ago, CoR followed a successful lobbying strategy and is acknowledged by the Union mechanisms.

¹¹³ *Ibid*, p. 22.

Following these developments, the Commission continued its work for better regulation and adopted the “Better Lawmaking” Action Plan in order to simplify and improve the quality of the regulatory environment without changing the Treaty.

Regarding this, the Commission adopted a Communication in February 2003 in order to set a detailed framework of action. The plan aimed to simplify and improve access to EU law. The action plan may be regarded as the last chain of a process that started with the Lisbon Summit.

In 2000 Lisbon Summit, an objective to make the European Union world’s most competitive knowledge-based economy by the year 2010, was set. The aim of this initiative was to modify the EU legal system and make it more reliable, updated and user-friendly for every citizen to benefit from.¹¹⁴

In the light of this aim, the Union has taken the first step to simplify the complex and dense volumes of legislation. For this, the Commission made a proposal to repeal over 1000 pages of the Official Journal that contained obsolete legislation. In addition, the Commission also made an estimation that the adoption of a systematic program to codify the legislation may reduce the volume by nearly 35000 pages by the end of 2005.¹¹⁵

The huge amount of European legislation has become a very key issue in terms of European Governance. A small statistic shows the seriousness of the problem: At the end of 2002 the body of binding secondary legislation adopted by the European institutions

¹¹⁴ Communication from the Commission on Action Plan for Simplifying and improving the Regulatory Environment. (June 2002). *European Commission*. Retrieved: June 10, 2005.
http://europa.eu.int/comm/governance/governance_eu/law_making_en.htm

¹¹⁵ Commission Communication on Operating Framework for the European Regulatory Agencies. *European Commission*. Retrieved: June 10, 2005.
http://europa.eu.int/comm/governance/governance_eu/law_making_en.htm

amounted to 97000 pages of Official Journal.¹¹⁶ Considering the fact that each year this amount increases by adopting new legislation, the need to codify and simplify the legislation is a primary aim for improving good governance in Europe.

In the White Paper on European Governance, the Commission made a certain number of commitments about the quality and transparency of improving the large number of consultations that it holds. Regarding this, in 2002, the Commission made a list of bodies that it uses to consult the civil society and to plan the protocols that are signed with the Committees such as the Economic and Social Committee and the Committee of the Regions. Apart from this, the Commission decided to publish guidelines on how to obtain expert opinions and how they can be used by the Commission.¹¹⁷

The Commission also adopted a Communication to create at least minimum standards for the process of consultation. The Commission's emphasis on the importance of consultation and its commitment to improve the process by further involving committees such as the Committee of Regions is worth mentioning. The Commission's commitment in this issue clearly shows the Union's moderate approach towards multilevel governance. It is an indication that the Union shifts from an approach of governance at institutional level to an approach that involves multiple stakeholders such as regional and local authorities which are closer to citizens.

¹¹⁶ *Ibid.*

¹¹⁷ Better Lawmaking. *European Commission*. Retrieved: June 12, 2005.
http://europa.eu.int/comm/governance/governance_eu/law_making_en.htm

3.2.2 Public Opinion and Participation of Civil Society

Without a doubt, the presence of the national executives of member-states is important in terms of bargaining processes, policy making and implementation. As Dalton and Eichenberg emphasized, the initial process of European integration was dominated by the strategies and actions of political executives in line with the above mentioned intergovernmental model.¹¹⁸ On the other hand, as the integration process widened, the number and the kind of actors involved in policy making increased. The Union moved towards a more supranational governance model where public opinion, public reactions to the executive decisions made an important impact on European politics. Public reactions to the reforms of the Single European Act, the Maastricht Accords, the Danish Referendum of 1992, the Irish, French and Danish referendums of 1993 were all important signs of how vital the public opinion is regarding the European integration. Without a doubt, the most recent examples to this are the referendums on European Constitution.

To sum up, especially in the last decade, the importance of public opinion has grown significantly and came to the attention of political and academic arena. In the European Union's White Paper on Governance, the first point is on the importance of how people perceive the European Union:

“Today, political leaders throughout Europe are facing a real paradox. On the one hand, people increasingly distrust institutions and politics or are simply not interested in them. The problem is acknowledged by national parliaments and governments alike. It is particularly acute at the level of the European Union. Many people are losing confidence in a poorly understood and complex system to deliver the policies that they want. The Union is often seen as remote and at the same time too intrusive. The Irish "no" highlights the impact of these problems on many people. This was reflected not only in the final outcome of the referendum, but also in the low turnout and quality of the debate which preceded it. Yet people also expect the Union to take the lead in seizing the opportunities of globalisation for economic and human development, and in responding to environmental challenges,

¹¹⁸ R.J. Dalton and Richard C. Eichenberg (1998). Citizen Support For Policy Integration. In: Wayne Sandholtz and Alec Stone Sweet (Eds.), *European Integration and Supranational Governance*. Oxford University Press, p. 8.

unemployment, concerns over food safety, crime and regional conflicts. They expect the Union to act as visibly as national governments. Democratic institutions and the representatives of the people, at both national and European levels, can and must try to connect Europe with its citizens. This is the starting condition for more effective and relevant policies.”¹¹⁹

It is apparent that the politicians have realised public support for the European Union can be influential for further integration or as the White Paper points out, public scepticism and distrust can slow or even endanger the process of integration.

As mentioned before, with the rise of the importance of public opinion, the participation of civil society has become a major issue to be taken into consideration if the case is to improve European Governance. As a natural outcome, the more the civil society participate in the decision making mechanisms and policy implementation, the better will be the public opinion, because the public tends to support or be in favor of policies which itself has played a role in the creation process.

Civil society can be considered as a network of organizations or associations which voluntarily work towards empowering citizens so that they can more effectively articulate their opinion and actively participate in the policy-making process. The existence of a strong civil society (NGOs) strengthens the dialogue between the Union and its citizens.

NGOs in Europe play a facilitative role in this dialogue; NGOs represent public interests towards the Union and also ensure that the Union policies are developed and implemented in an orderly manner. In addition NGOs are key actors in reducing “the gap between the governing and the governed”¹²⁰ by raising awareness of the public concerning the legislative, executive and judicial systems of the Union.

¹¹⁹ White Paper on European Governance. *European Commission*. Retrieved: August 1, 2005. http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001_0428en01.pdf, p. 12.

¹²⁰ Democracy, Governance and European NGOs. *Platform of European Social NGOs*. Retrieved: April 17, 2006. http://www.socialplatform.org/module/FileLib/democracy_governance_and_european_ngos.doc, p. 3.

Before the White Paper on Governance was adopted, the Commission has prepared a discussion paper in 2000. In this paper, the Commission points out the increasing level of cooperation between the Commission and the NGOs over the last two decades. The Paper points out that strong cooperation fosters democracy, enables the representation of the views of citizens, contributes to policy-making, to management of projects funded by the Union and to European integration.¹²¹

In addition to the reasons behind this cooperation, the Paper also highlights an important problem, which is actually pointed out several times before as an obstacle towards European Governance: the complexity of EU legislation. The paper argues that:

“... the complexity of EC policies as well as the growing number of regulations and funding sources (budget lines) coupled with recent financial security problems have created a great deal of uncertainty for NGOs about co-operation with the Commission. Both the Commission and the NGOs wish to put the relationship on a new footing. The context to this initiative is recognition on the NGO side that many policy areas are now being decided at European level as well as the increase in funding available to NGOs from the European Union. A new Commission committed to change and reform, means the time is right for a new initiative”.¹²²

Once again, the complex legislation comes to surface. Apparently, in every principle or element that strengthens good governance in Europe is challenged by this problem. A positive observation here is the attitude of the Commission towards this problem. The Commission recognizes the risks, and especially since the beginning of the new millennium, clearly shows its commitment for reform.

¹²¹ The Commission and the NGOs: building stronger partnerships. *European Commission*. Retrieved: May 1, 2006. http://ec.europa.eu/civil_society/ngo/docs/communication_en.pdf, p. 4,5.

¹²² *Ibid*, p. 2.

3.2.3 Decentralization

It is very unlikely to have good governance through a strict central approach, especially in an organization as broad and complex as the European Union. Therefore, it is important not to overlook the issue of decentralization.

Decentralization as a political term can be defined as the transfer of power and resources from the central authority to regional and local authorities. Through decentralization, services are carried more easily to the citizens and the possibility of citizens' participation on decision-making increases.

The idea of decentralization in EU can be analyzed in two dimensions. The first one is decentralization through regulatory agencies. The intention here is to allocate the task of regulation to agencies where a decentral and specific approach is necessary. This dimension of decentralization focuses more on transfer of power within EU institutions at supranational level.

In June 2001, the Commission produced a report regarding the issue of regulatory agencies. The report was produced prior to the White Paper on Governance, and in the report the Commission listed recommendations to establish a framework for regulatory agencies.¹²³

In the light of this development, the White Paper underlined the conditions for the creation EU level regulatory agencies. While underlining these conditions, the White Paper also emphasized that although the Treaties grant direct responsibilities to agencies, this should

¹²³ Commission Report on Establishing a Framework for Decision-Making Regulatory Agencies. (June 2001). *European Commission*. Retrieved: July 2, 2005, p. 5.
http://europa.eu.int/comm/governance/areas/group6/report_en.pdf

be done keeping in mind the balance of power between the institutions. This implies the following conditions:

“Agencies can be granted the power to take individual decisions in specific areas but cannot adopt general regulatory measures. In particular, they can be granted decision-making powers in areas where a single public interest predominates and the tasks to be carried out require particular technical expertise (e.g. air safety).

Agencies cannot be given responsibilities for which the Treaty has conferred a direct power of decision on the Commission (for example, in the area of competition policy).politique de concurrence) ;

Agencies cannot be granted decision-making powers in areas in which they would have to arbitrate between conflicting public interests, exercise political discretion or carry out complex economic assessments.

Agencies must be subject to an effective system of supervision and control”.¹²⁴

The conditions mentioned above indicate the Union’s doubts about transferring power to regulatory agencies. The main concern here is to allocate too much responsibility and to lose control of their activities and as a result damage an already fragile balance of power within the Union.

The other dimension of decentralization is geographic decentralization. Good governance encourages the involvement of regional and local stakeholders in policy making and implementation. As in other issues, prior to the White Paper, the Commission also produced a report in June 2001 with recommendations on the best ways to achieve geographical decentralization of governance. In this report, the Commission emphasized that an interactive subsidiarity approach should be integrated into a revised action plan for European Union governance.¹²⁵

A second Commission report, which may be considered as the starting point of viewing European governance as a multi-level concept, listed recommendations on linking

¹²⁴ Decentralization through Agencies. *European Commission*. Retrieved: June 2, 2005. http://europa.eu.int/comm/governance/governance_eu/decentral_en.htm

¹²⁵ Commission Report on Better Involvement of National, Regional and Local Actors. (June 2001). *European Commission*. Retrieved: June 2, 2005. http://europa.eu.int/comm/governance/areas/group7/report_en.pdf, p. 4.

and networking the various territorial levels within the European Union. The report underlined five proposals:

- “-Setting up a local and regional dialogue upstream of decision-making.
- Involving the Committee of Regions more effectively.
- Partnership in the implementation of community policies between the three levels of territorial actors: infranational, national and community.
- Organizing the coordination of community policies.
- Creating a community legal instrument for cross-border, transnational and interregional cooperation”.¹²⁶

Based on the conclusions and recommendations of these two reports, the White Paper on European Governance concluded that two distinct approaches could help give more recognition to the regional and local dimension of European governance:

“first, the organisation of an ongoing and systematic dialogue with associations of EU regions and cities, with a view to achieving greater involvement of the third and fourth levels of European governance in the political life of the EU, with special emphasis on shaping European policies and standards; secondly, testing the use of target-based tripartite agreements and contracts as a means of achieving greater involvement of these levels of European governance in the implementation of EU legislation and policies”.¹²⁷

It is important to emphasize that the two of the reports highlight the strengthening of a systematic dialogue for good governance. Furthermore, regarding this issue, the White Paper proposed that beginning from 2002 onwards, the Commission should establish a stronger and a more systematic dialogue with regional and local authorities on policy-making and implementation. The White Paper also determined what the Committee of Regions and the member states should do to enhance relationships with local and regional authorities. In this respect the White Paper emphasized that the Committee of the Regions should:

¹²⁶ Commission Report on Multi-Level Governance: Linking and Networking the various Regional and Local Levels. (May 2001). *European Commission*. Retrieved: June 2, 2005.

http://europa.eu.int/comm/governance/areas/group10/report_en.pdf

¹²⁷ Geographical Decentralization. *European Commission*. Retrieved: June 2, 2005.

http://europa.eu.int/comm/governance/governance_eu/geo_decentral_en.htm

“play a more proactive role in examining policy, for example through the preparation of exploratory reports in advance of Commission proposals;
 organise the exchange of best practice on how local or regional authorities are involved in the preparatory phase of European decision-making at national level;
 review the local and regional impact of certain directives, and report to the Commission by the end of 2002 on the possibilities for more flexible means of application. The Commission will then consider a more systematic approach to allow such flexibility for some parts of Community law”.¹²⁸

Apart from systematising dialogue, perhaps the most remarkable step the White Paper has taken towards European governance is the idea to have target-based tripartite contracts between the Commission, the Member States and the regional and local authorities. This idea supports a multilevel approach of governance. In addition, the inclusion of regional and local authorities may have a positive impact on increasing the legitimacy. Furthermore, their inclusion will transform the implementation process into an open and transparent one.

Following the White Paper, the Commission Communication in 2002 defined the target-based tripartite contracts as contracts in relation to the application of binding law and target-based tripartite agreements as agreements in relation to the application of soft law.¹²⁹

Although the idea is very promising in terms of good governance, the whole issue may not turn out to be a success because apart from the trial stage, no funding is planned in order to support tripartite contracts. Considering the difficulty that this may bring on the implementation process, it is highly likely that the idea of target-based tripartite contracts will remain as a pleasant wish on paper; at least for a while.

¹²⁸ Geographical Decentralization: Target Based Agreements and Contracts. European Commission. Retrieved: June 2, 2005. http://europa.eu.int/comm/governance/governance_eu/tripartite_en.htm

¹²⁹ Gracia Vara Arribas. The Changing Dynamics of Sub-State Participation: The Commission's Proposals for Increasing Regional and Local Involvement in European Policy Processes. *Archive of European Integration, University of Pittsburgh*. http://aei.pitt.edu/5947/01/SCOPE2005-2_3.pdf, p. 5.

3.3 The Treaty Establishing a Constitution for Europe

Constitution-making in EU has become a major challenge especially with the enlargement process on the agenda. Concerns over the question on whether the institutions will function properly when the Union enlarges into 25 or more Member States. Although the treaties of Amsterdam and Nice were crucial steps towards addressing these concerns, they could not propose any concrete solutions. Following these treaties, it was the Laeken Declaration which created the Convention process for establishing a draft treaty on the constitution. The Convention on the future of Europe worked intensively to create a draft. As a result, the Treaty establishing a Constitution for Europe has been signed by the Heads of State and Government in Rome on 29 October 2004. Of course, what is more essential is the ratification process by the member states. The process of ratification grudgingly came to a halt when French and Dutch voters rejected the treaty three days in a row. Concerned that this may create a chain reaction, rest of the countries postponed their ratification processes. So far, the treaty has been ratified by 15 states and its fate is uncertain.

Considering all the issues discussed in the previous chapters, the voters's rejection should not come as a surprise. This is a clear proof of the citizens' mistrust towards the Union and shows how alienated and prejudiced the citizens have become.

However uncertain the future of the treaty is, the articles referring to good governance are worth analyzing. The treaty emphasizes good governance in two levels. The first paragraph of Article I-50 refers to good governance in EU:

“In order to promote good governance and ensure the participation of civil society, the Union institutions, bodies, offices and agencies shall conduct their work as openly as possible”.¹³⁰

In addition, Article III – 292.2 of the Treaty emphasizes good governance at a global level:

“The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order: h) to promote an international system based on stronger multilateral cooperation and good global governance”.¹³¹

There also other articles in the Treaty which refers to the concept of governance without directly using the word but emphasizing principles or actors such as regional and local self-government, participatory democracy and cooperation:

“Article I – 3 Paragraph 3: The Union shall ... promote economic, social and territorial cohesion, and solidarity among Member States.

Article I-5 Paragraph 1: The Union shall respect the equality of Member States before the Constitution as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security.

Article I-23 Paragraph 1: The Council shall, jointly with the European Parliament, exercise legislative and budgetary functions. It shall carry out policy-making and coordinating functions as laid down in the Constitution.¹³²

Article I-46: The functioning of the Union shall be founded on representative democracy.

Citizens are directly represented at Union level in the European Parliament.

Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.

¹³⁰ Treaty establishing a Constitution for Europe. (13 October 2004). *European Commission*. Retrieved: June 18, 2005. <http://ue.eu.int/igcpdf/en/04/cg00/cg00087-re01.en04.pdf>, p. 61.

¹³¹ *Ibid*, p. 238,239.

¹³² This article is different from the rest because it is concerned more about European governance on an institutional level.

Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.

Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union.

Article I-47: The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.

The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

The Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent".^{133 134}

Obviously, the Union has taken bold steps towards European governance. While the decisions that are taken on paper appears very promising, it is way too early to evaluate their impact on European governance. Two elements in this discussion may turn out to be very powerful catalyst for European governance: the target based tripartite contracts and agreements and the articles regarding governance on the Treaty establishing a Constitution for EU. If these decision are implemented effectively, the Union would set up a strong basis for governance and would diminish the communication gap between the Union and its citizens. On the other hand, if they turn out to be dead promises, there is a high risk that the gap can become larger and difficult to close.

Taking into consideration the fact that no funding will be provided for the implementation of the tripartite contracts and agreements and the uncertain fate the Constitutional Treaty makes the wheather quite misty for European governance. Still, it is early to make a definite judgement.

¹³³ This article defines the principle of participatory democracy; a first in EU primary law.

¹³⁴The information above is taken from European Commission's "Treaty establishing a Constitution for Europe". 13 October 2004. <http://ue.eu.int/igcpdf/en/04/cg00/cg00087-re01.en04.pdf>, p. 18,19,20,35,59,60.

CONCLUSION

It is an undeniable fact that the formation of the European Union created an environment of stability, prosperity and peace in Europe. Over the past five decades, the Union has grown from a small organization to one of the strongest political bodies in the world.

Apart from all its positive impact, the inevitable rise of the European Union also brought an important issue which may directly effect its existence. The complexity of European Union mechanisms, thousands of pages of *acquis* carries the Union towards a deadlock. The public oftentimes do not know the content of the policies that are created and implemented, because people do not want to get stuck in the complicated statements, reports and regulations. Therefore, they feel alienated. Therefore, they do not trust the Union's institutions. The result becomes apparent in the referanda; especially on the European Constitution.

Both the member states and the institutions are aware of the problem and for the last decade, they are working to create a permanent solution. They know that as long as every stakeholder in the union; including the states, the private sector and the civil society, are not involved in the policy making and implementation process, the chances of keeping the Union stable decrease.

It is fair to point out that the Commission, the Council and the Parliament have shown their commitment to adopt good governance in the European Union. However, showing commitment, producing reports, working papers or communication reports are not solely enough for good governance.

On the contrary, if the paperwork is not complemented with solid action which should be taken within the framework of legislation, there is a higher risk for citizens' to completely lose their trust in the system. This risk shows itself especially with the Constitutional Treaty and the target based tripartite contracts.

The Constitutional Treaty contains several articles which may directly be applied within the framework of good governance principles. However, the ratification process has come to a halt and no referendum is likely to take place or even if it does, there is a high possibility that the result shall be the rejection of the Treaty.

Apart from the Constitutional Treaty, the Commission's decision on target based tripartite contracts and agreements may be evaluated as a very promising development. With this approach, multi-level governance may be realized to a certain extent within the Union. However, there are several concerns around this issue, which at the end are raised as a result of the power struggle among the stakeholders. The Commission is inclined towards cooperation, but do not wish to hand over too much power to nation-states or local governments with a defensive reflex for protecting the supranational identity. The Nation-states comprehend the necessity of active participation of local governments and CoR in legislation for good governance, but at the same time refrain themselves from any action that may lead to weakening of the central government. In addition, the fact that no funding shall be given for the implementation process is another negative aspect in this case.

Although the decision may look promising, it will have almost no or very insignificant impact on good governance in Europe.

How then, will European Union have good governance? It seems that, the focus points of this thesis creates a recipe that contains five elements.

The first one is effective implementation of legislation concerning governance. The two cases mentioned above clearly indicate the importance of implementation as a key

principle for good governance. Both the Treaty and the tripartite contracts look smart on paper but are humble when it comes to implementation.

The second element is the necessity to raise transparency and accountability of European governance by applying the five principles of governance defined in the White Paper. These principles must be respected by the European institutions and the Member States.

Thirdly, the Union needs to arrange a better system of administration through a new procedure on committee governance, further simplifying the process and make it more transparent for other stakeholders.

The fourth element is to enhance a solid management system of multi-level governance; involving every stakeholder in the process. For this, a solid and working network among stakeholders should be created. The Union should continue to work towards cooperation between the institutions, member states, regional and local authorities. In addition, the Union should find new channels to reach out to the citizens and become more citizen-friendly. The idea of e-governance may create the desired result to increase active participation of citizens. Another important channel is to strengthen cooperative relationship with NGOs. In addition, public-private sector partnerships must be enhanced.

A final element for good governance in Europe is to give more emphasis on the principle of subsidiarity and local governance. Unfortunately, the importance of local governance is oftentimes undermined against globalization. There is a misperception that promoting local governance is a counter trend to strengthen localization against globalization. On the contrary, globalization should be evaluated as a concept that encompasses local dynamics as well. It is an end result of a chain reaction which in fact includes local governance as well.

The same is true for European Union. The general belief is that because European Union is a supranational organization, European Governance can be realized through a strong system of governance among the Council, the Parliament and the Commission. This view is only partially true. The Union is a body created for the people, as a guardian for the principles of democracy and human rights. A mere focus on governance among institutions would result in an exclusion of citizen participation. Considering the fact that local governments are the political bodies closest to citizens, it is essential for them to take a facilitative role in this process. Local governance can be a power a catalyst for citizen participation. Especially in the last decade, policy-makers in the Union came to this realization. Although their current role is not as influential as it should be, it is highly likely that over the next decade, local governments and the idea of local governance shall take the leading role in European Governance.

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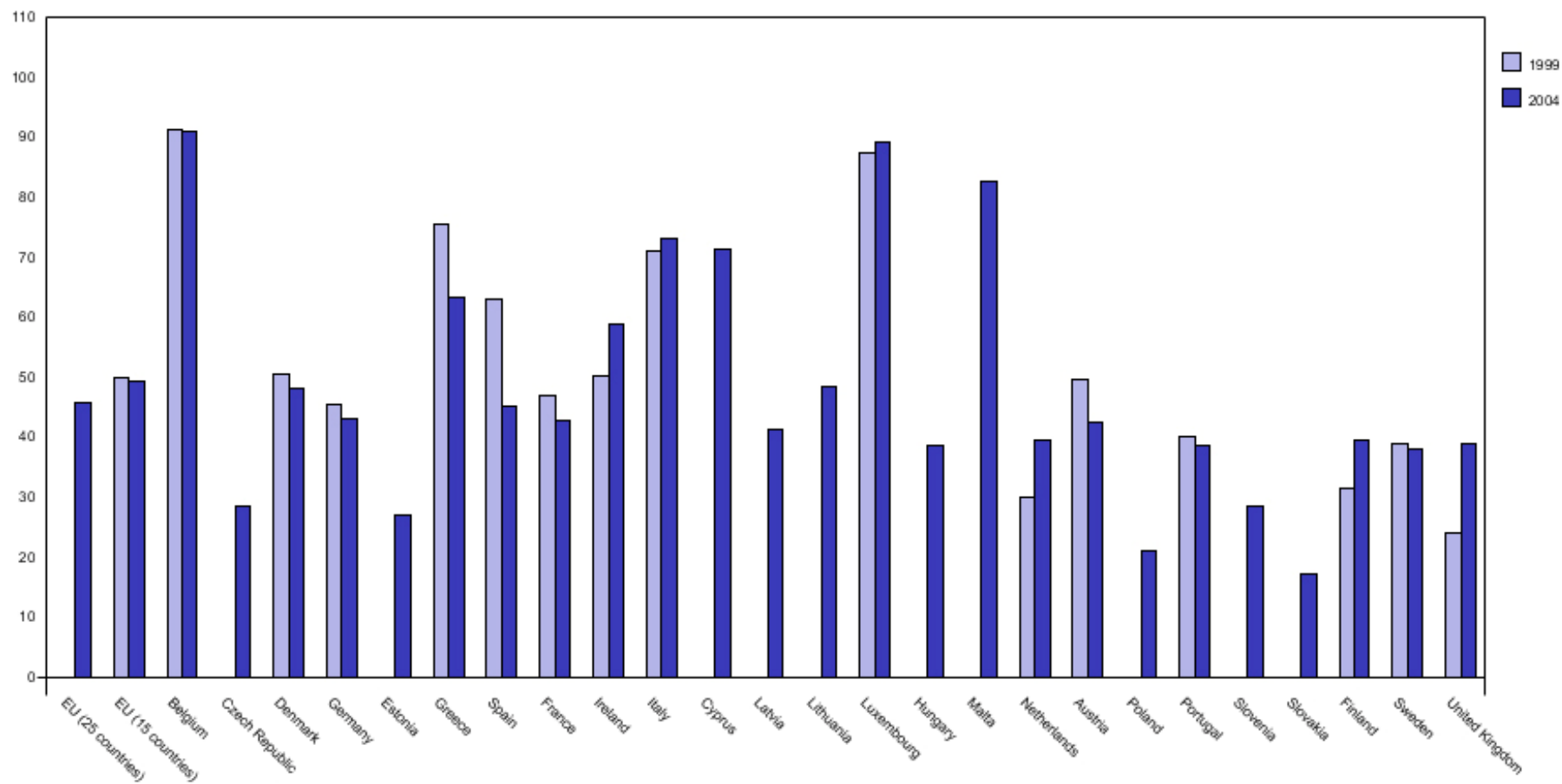
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Voter turnout in EU parliamentary elections

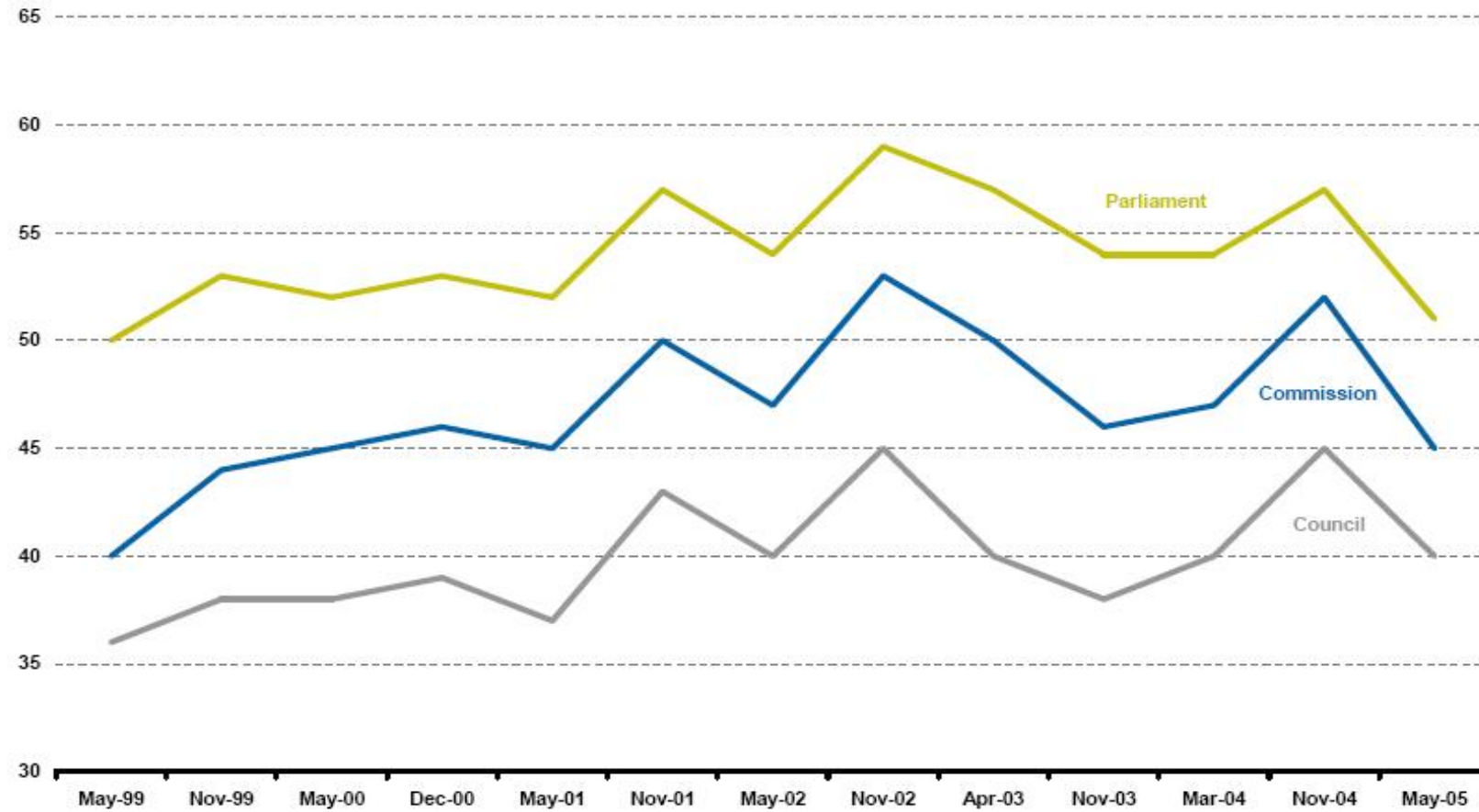
%



Source: European Parliament



GOOD GOVERNANCE
Level of citizen's confidence in EU institutions (EU-15)
%



Source: Eurobarometer (DG Press and Communication).