COMMENTS ON THE EUROPEAN COMMISSION'S

White Paper on Governance COM (2001) 428 final

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With the issuance of its *White Paper on Governance*, the European Commission has rightly realized that the European Union is entering a new phase of its evolution that demands "moving from a diplomatic to a democratic process." (p. 30) This is especially true following the successful establishment of a true monetary union. However, that move remains more aspiration than fact, as the tools to effect such change are still largely undeveloped. The question raised in the *White Paper* was what new procedures and institutions are needed to best nurture this democratic process, and how the European Commission should manage them. Congrex[1] and The Forbes Group[2] welcome the Commission's vision and its effort. We too believe that all Europeans need to reevaluate the public dialogue to assure that, as this transition takes shape, the Commission encourages the emergence of new transparent, pluralistic institutions to take the place of opaque diplomatic representation that defined social policy and regulatory debate and outcomes in the past. Those of us in the healthcare arena and related business services especially realize that as our societies and economies integrate further there is increasing urgency to "generate a sense of belonging to Europe [and] to create a trans-national 'space' where citizens from different countries can discuss what they perceive as being the important challenges for the Union." (p. 12)

However, we suggest that rather than "*staying in touch with* European public opinion," the Commission's role at this point is *helping to nurture* a European public opinion. Congrex proposes that "the space" that the Commission identified is not a physical or institutional "inter-active platform for information, feedback and debate" within the EU structure as anticipated in the *White Paper*. It is, in fact, the professional association sector itself, which also needs to move beyond the nationalistic characteristics engendered during the era of diplomatic process and evolve into truly European organizations. We believe that with the encouragement of the Commission, the "independent sector" can provide the EU with the source of information, the venue for debate, and the champion of commonly achieved standards, policies, and goals envisioned in the *White Paper on Governance.*

THE ROLE OF HEALTHCARE IN CREATING A EUROPEAN VOICE

Congrex proposes that the pilot project suggested by the *White Paper* not be in the politically charged environmental arena where promoting public policy as veiled non-tariff barriers (NTBs) is an historic norm. In the absence of a clear and present danger, local jobs trump the regional environment every time. Healthcare, on the other hand, is readily personalized.

While there remain many holdovers from the diplomatic process era that still try to use national differences in standards as NTBs in an effort to reduce inter-Union competition, consumers have already demonstrated readiness to place universal access to healthcare above local job preservation on numerous occasions. A growing share of healthcare professionals understands that in the age of electronic commerce, this approach not only reduces innovation in the short-run, but also is eventually counterproductive in the long-term as patients can now effortlessly seek care elsewhere in Europe and beyond.

[1] The Congrex Group is an international conference management and consultancy company (www.congrex.com).
[2] The Forbes Group is a leading strategic management and research firm in the association sector in North America (www.forbesgroup.com).

In 1998, Greek optical manufacturers, hoping to boost prescription eyewear sales, attempted to limit consumer access to non-prescription "readers" by passing laws that restricted local distribution of even non-prescription eyewear to licensed opticians. In the end, this restriction hurt local pharmacies, which lost retail sales.
However, the benefits to Greek opticians and eye care providers were blunted as Greek consumers were encouraged to avoid the inconvenience and higher prices by shopping directly from eyewear distributors in other EU member countries on their websites.

Efforts to restrict inter-Union trade of pharmaceuticals have been similarly compromised by the Internet. Thanks to provisions for parallel imports in the WTO treaty, access to doctors in other nations through the Internet, and advances in telepathology, European patients have been able to legally circumvent the licensing restrictions and obtain prescriptions anyway. While pharmaceutical distributors within the EU agreed not to undermine differences in product licensing by not overtly marketing products in countries where they are not licensed, multilingual "product information sheets" have adopted more marketing language and tone. More importantly, non-European producers and distributors, who are not encumbered by these website content restrictions can market directly to European consumers and sidestep all consumer protection and safety efforts.

In another example that demonstrates this is not simply a European phenomenon, American medical providers and pharmaceutical manufacturers are finding that regulatory restraints against printing medicinal properties on the labels of herbal and homeopathic products equally difficult to police. European manufacturers and distributors are able to use their offshore Internet sites to educate American consumers and effect the sale without violating local labeling laws. US medical authorities now fear a growing medical crisis after a survey found that as many as a third of Americans regularly self-medicate with herbal or homeopathic products without even the knowledge, let alone the advice, of their physicians or pharmacists. Herbology, long ignored in American medical schools, is becoming increasingly popular among both medical and pharmaceutical students.

There is a growing agreement among European pharmaceutical manufacturers that more closely coordinated and transparent licensing practices are needed to assure efficient pharmaceutical production, distribution, patient access, and quality of care simply because consumers have been so quick to place their personal well-being above local economic security. With rising education levels and broader access to product information, European consumers are quick to challenge health, safety, and welfare claims that they believe are motivated by economics and not science when their health is at stake.

An Established Infrastructure

Regulation needs to be made at the level of government that defines the market, either local, national, European, or global. Yet, to be credible to the public and above national or regional political pressures, these regulations must be debated outside traditional political forums. Diluted hybrid policies derived from political compromises among the concerns of different regulators will no longer work. That method of policy development is a relic of the diplomatic era and a contributing factor to the lack of trust of policy recommendations that the *White Paper* identified. Again, the healthcare sector, whose multinational medical conferences on scientific and product research and development as well as care and treatment protocols, already has a rich tradition in trans-Union discourse and cooperation that remain the envy of other sectors. Inherent in these conferences are the platforms for Union-wide discourse on policy development, the "space" that the Commission's *White Paper* seeks.

Therefore, Congrex and The Forbes Group recommend that the Commission focus on healthcare, its related professional association as well as business services sectors. The health care sector threatens to be the greatest drain on the collective finances of its member states. In healthcare, both consumers and providers have a vested interest in achieving open, transparent, and rational rules setting to assure consumers/patients access to appropriate care and providers expeditious access to their patients and customers. While recognizing that healthcare and healthcare product providers also work in politically charged environments, people are quickly prepared to put the job security of others after their own health. The benefits from sharing efficiencies and solutions across markets are much more readily obvious and supported. This is particularly true in technology issues, such as telemedicine where younger consumers already feel disenfranchised by what they consider outdated nationalistic systems and organizations. With the support of the European Commission the healthcare sector through its related professional associations can

create that "space" and in partnership start to develop a regionally independent, truly European perspective to guide the Commission's policies.

THE IMPORTANCE OF MEMBER ASSOCIATIONS IN ECONOMIC DEVELOPMENT

Dr. Helmut K. Anheier, one of the founders of civil society economic and public policy theory, wrote as recently as 1997, "Long recognized as instruments of relief and promoter of human rights, non-profit organizations have only recently come to be viewed also as critical contributors to the basic economic growth and *the broader civic infrastructure* that is now increasingly seen as a fundamental precondition for markets and representative political institutions to function."[3] Consistent with this general oversight, the Commission's *White Paper* gives scant attention to the crucial role that must be played by business, trade, and professional associations, which combined comprise what Dr. Lester Salamon, of Johns Hopkins University's Center for Civil Society Studies labeled the "member-serving" association sector.

The *White Paper* provides an extremely narrow definition of civil society organizations that is limited to those that "mobilize people and support … those suffering exclusion and discrimination."(p. 14) Aside from those employer organizations that serve as "social partners," the Commission's *White Paper* implicitly limits the scope of civil society participation to direct citizen-action groups, even using environmental activists' contribution to the debate on a common fishery policy as an illustration. (p. 15) Dr. Lester Salamon, who coined the phrase "global associational revolution" and launched the current drive to include civil society organizations as active participants in economic advancement and not simply interlocutors, initially distinguished this type of civil society organizations, "public-serving" associations. While crucial, they are only one part of the entire sector. Dr. Salamon's choice of labels implies that citizen-action organizations serve a greater, common good while member-serving associations serve more limited special interests that may or may not be consistent with the commonweal. More recent discussions among civil society theorists, however, have found this distinction limiting.

By omitting member-serving associations, such as the very large number of established and influential European professional and scientific medical associations from a civil society dialogue, the Commission denies itself an extremely valuable ally in building a true European voice. While some tend to dismiss member-serving organizations as groups that pit the narrowly focused concerns of a special interest group against the a broader public good, this description does a disservice to the social good achieved by this crucial, long time established and influential European sector and denies the EU access to that part of the civil society more able to harness a wide range of forces to achieve social and other desirable objectives.

This has proven especially true in healthcare. As mentioned above, medical associations and societies have played a central role in fostering the collegial debates that have supported medical and healthcare innovation and improved quality of care. While it is in their members' interests that the public has universal access to healthcare services, this has made them the proponents of consumers' rights and social investment in public health. Additionally, medical licensing and professional standards, the core function of most healthcare associations, were established to protect the *physical well-being of the patient*, not the economic well-being of the provider. In the end, the political strength and social authority of member-serving healthcare organizations rests in how well they represent what is good for the public not by how well they serve the immediate concerns of their members. Economic development theorists and policy makers are now coming around to the thinking. Member-serving associations are now being given much greater emphasis because of their ability – and some argue absolute need – to achieve a consensus that emphasizes *broad-based social efficiency and market access.*

Not by Politics Alone

In fact, member-serving associations' decision-making often compares favorably to the political accommodation and compromise that drives public-serving citizen-action groups. This is especially true as globalization raises the need to effect transparent standards development to assure competitiveness of local firms and industries against a growing

[3] Anheier, Helmut, K., and Lester Salamon, *The Nonprofit Sector in the Developing World, A Comparative Analysis*, Manchester University Press, Manchester, UK, 1997

array of global alternatives. Dr. Kumi Naidoo, chairman of Civicus, a civil society think tank, criticized the citizen-action transnational networks singled out in the *White Paper* by observing, "contrary to a system of democratic, transparent decision-making structures, the current state of global politics is characterized by a high level of hierarchical relationships and undemocratic structures hidden behind a façade of many powerful organizations." The result, Dr. Naidoo concludes is "truly democratic decision-making has yet to emerge" resulting in a perception of "a decline of individual sovereignty" and a "retreat of the state" just as described in the *White Paper*. There is little wonder that EU rules developed in such an environment are seen as "foreign laws" (p. 25) that "are not supported or inadequately enforced." (p. 19)
Dr. Naidoo further observed that transnational debate among citizen-action organizations is the consequence of globalization and the telecommunication revolution and not by some driving desire to cooperate above the local level. Therefore, the transnational political activist networks targeted by the Commission (p. 18) are, according to Civicus, "a by-product of globalization" and not a driver as assumed by the *White Paper*.

In contrast, member-serving associations who must deal with transnational border problems are playing a growing role in shaping globalization and transnational standards development. This is well demonstrated in the healthcare sector where European, American, and Japanese associations all report increased communication, growing foreign attendance and participation in conferences, and a growing number of joint initiatives. Dr. Naidoo concurs noting that the voice of civil society has been strengthened as the global debate shifted from "soft issues" dominated by citizen-activist organizations (e.g. biodiversity, environmental management) to "hard issues" that are the principal domain of member-serving associations (e.g. product and professional standards, continuing education, trade and financial regulation).[4] Clearly, the European Commission can achieve its goal more effectively and quickly by placing greater emphasis on engaging member-serving associations, particularly in the healthcare issues that will dominate public debate in the years ahead.

GEOGRAPHICALLY INDEPENDENT – NOT GEOGRAPHICALLY REPRESENTATIVE

The late Thomas "Tip" O'Neill, former Speaker of the United States House of Representatives once remarked, "All politics is local." While all politics may be local, all business is now global. Nowhere is this more obvious than in healthcare. Conventional wisdom contends that because healthcare services are delivered locally that healthcare policies are the exclusive domain of local decision-making. However, research undertaken by The Forbes Group, found that the more highly regulated the market, the greater the incentive for associations to develop open, transparent systems to manage those regulations and the greater the drive for transnational pluralism as markets expand and competition increases. Because more public-policy intensive markets are, by definition, more rigid and less responsive to market and technological shifts, it is more important that practitioners get it right the first time. Therefore, business and other professional associations in these sectors willingly work with policy-makers to be sure that policies are fully vetted and the ramifications of policy actions fully understood. This includes continuous "comparative systems analysis" that compares the performance of healthcare policies and practices across different nations and national healthcare systems.

Consequently, healthcare product and service providers are, therefore, on the forefront of transnational discourse and leaders in creating European priorities and standards as both the pace and scope of technological, social and economic changes surpassed local regulatory authorities abilities to respond. New screening technologies that identify at-risk populations sooner and create opportunities for proactive treatments change the skills required of doctors, nurses, technicians, and other healthcare professionals. Advances in prescription drugs that allow for the remote patient management shift healthcare and medical treatment out of institutional settings and into homes, placing new demands on pharmacists, home care providers, and community based health services. Less invasive technologies change both the support services and technologies required by hospitals and the kind of outpatient care needed. In order to assure their patients access to new technologies and practices European healthcare experts realize that they must develop similar if not common standards in order to minimize adoption costs and assure patient safety. This is leading to common approaches to professional standards and scope of practice regulations and greater coordination in product licensing. Contrary to the *White Paper's* approach of increasing discussions on

[4] Naidoo, Kumi, Volkhart Heinrich, "Global Civil Society and the Challenges of the new Millennium" Civicus working paper prepared for ISTR Conference, Dublin Ireland, July 5-8, 2000

regional distinctions, healthcare associations are developing a truly European perspective by focusing what decisions should be *geographically independent*.

Therefore, local concerns should not be part of a European policy any more than European concerns should be part of local policies. In an environment where pan-European concerns exist, policies should be driven by European interests. Truly European associations are the catalyst for such policies and the "space" where they can be developed.

OPENNESS VERSUS REPRESENTATION

In the end, this evolution resulting in an active role of European associations will be the most practical and effective means of achieving the *White Paper's* imperative that the EU find a means to reach through national governments to communicate directly with local and regional authorities and civil society organizations rather than its vision of the Commission directly engaging local representatives itself. While a "systematic dialogue with European and national associations of regional and local government" by the Commission may increase the number of voices participating in public debate, it would not guarantee the greater "openness, flexibility, and coherence," identified by the *White Paper* as the three tools to build effective EU policy-making across levels. (p. 13) In fact, direct inclusion of local and regional participants may only exponentially increase the current confusion facing the Commission by expanding the number of special interests without first establishing a common identity. The Commission may soon find itself a tool of local and national authorities, either of whom could threaten to "play the Brussels card" if it does not prevail at the local level. The Commission notes that national governments already play this game as "'Brussels' is too easily blamed by Member States for difficult decisions that they themselves have agreed or even requested." (p. 7) Why should other political interests be expected to behave any differently?

The *White Paper* often uses the terms *open*, *transparent*, and *representative* interchangeably. Anyone with experience in law making through national assemblies and parliaments knows all too well that representative government and transparent decision-making are not synonymous. Decisions made by representative bodies are usually the product of compromise, trade-offs, and future promises that are anything but transparent. However, they are accepted because everyone accepts the *process* by which the decisions are reached, even when they disagree with the decisions themselves. If the public feels disenfranchised by EU decision-making, it is because it does not trust the process regardless of its opinions of the result. Increasing the number or scope of participants will not change this perception nor assure an improved result.

Representatively Schemes Usually Ignore New Innovators

An open process provides an *opportunity* for participation, not a *guarantee*. Efforts by the Commission to establish minimum standards of "representativity" may, in fact, limit open debate by excluding from discussions new or specialized associations that are often the true innovators and drivers of change. Those who put themselves on the cutting edge of technology and practices are essential to any discussion on future. However, by definition, these risk takers are not representative of the market at large -- yet. Again, healthcare associations serve as an illustrative example. Proponents of new technologies or alternative treatments from within medical sub-specialties and healthcare professions are essential contributors to open discussions and transparent decisions on future healthcare and medical practices, often appearing within the framework of European specialist association conferences to voice and promote such new ideas and principles. However, if we were to demand that innovators first pass a representativity litmus test, the entire healthcare sector would be deaf to the voices calling out from the wilderness and become captive to the status quo. Ironically, the *White Paper's* call for establishing benchmarks for representation may actually limit openness of public debate and undermines credibility.

The *White Paper*, in fact, recognizes this phenomenon when it observed, "Yet, many of [the pan-European special interest] networks, whose roots reach down deep into society feel disconnected from the EU policy process." (p. 18) This reaction demonstrates the difference between contributing to a discussion and a sense of ownership of the results. Congrex and The Forbes Group support the Commission's efforts to develop more open decision-making processes, but warns that an emphasis on "representative" decision-making that curries wide-spread participation at the expense of open dialogue and results may in fact undermine efforts to achieve a working consensus and wide-spread ownership of the decisions made.

CONCLUSION

The European Commission's *White Paper* on Governance is a watershed event that heralds the beginning of a fundamental shift in policy development from a multinational diplomatic process to a transnational democratic process. However, while the Commission concludes that this requires new tools and infrastructure within the European Commission, Congrex and The Forbes Group believe that the ambitious goals of the *White Paper* can be achieved through promoting and supporting a faster development and empowerment of more (truly Pan-) European, widely representative, professional associations, which today frequently still are more federations of national associations. The place to start this process is not in the highly volatile citizen-action side of the civil society but among member-serving associations who deal with the "hard" issues of scientific, professional, educational, practical and economic integration are more attuned to developing a geographically independent European voice. No where is that voice more needed than in healthcare policy development where rising costs of an aging population, the increasing heterogeneous populations of new member states, and the promise and concerns of telemedicine and other quickly emerging technologies and medical practices all require an open and transparent process to guide the policies of the European Union.

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