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DISCIMUS

DIPLOMACY

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EDITION

ДИПЛОМАЦИЯ

ИЗДАНИЕ НА
ДИПЛОМАТИЧЕСКИЯ
ИНСТИТУТ

MINISTRY OF FOREIGN AFFAIRS
REPUBLIC OF BULGARIA

МИНИСТЕРСТВО НА ВЪНШНИТЕ РАБОТИ
РЕПУБЛИКА БЪЛГАРИЯ

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Dear „Diplomacy“ readers,

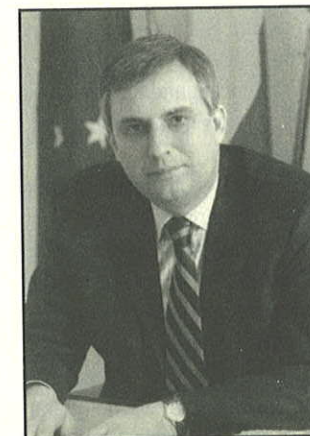
You have in your hands the first issue of the Diplomatic Institute magazine, which has the ambition to present before Bulgarian and foreign readers various perspectives on international relations issues.

I would like to wish its editors the strength and the enthusiasm to manage the difficult task of creating a unique resource for both current and analytical information in the area of diplomacy.

I believe the articles of the authors presented in the magazine – both Bulgarian and foreign, will provide a basis for useful discussions.

I am positive these publications will become an important historic evidence of our time and the development of Bulgarian diplomacy.

I wish the editors of the magazine to reach the broadest audience, to find very soon its friends and ardent readers in the vast international community.



Ivaylo Kalfin
Foreign Affairs Minister

Sofia, September 2008

The Simplified European Treaty and the Federal Future of Europe¹

Prof. Dusan Sidjanski

In the wee hours of 23 June 2007 the European Council reached at last an agreement on constitutional reforms. The grand ambition to provide a „Constitution for Europe“ was broken by the „No“ of two founding states of the European Community – France and the Netherlands. With the constitutional elan quashed, the European Commission adopted a pragmatic strategy of projects and specific implementations which became visible in its energy and environment initiatives. In parallel the period of reflection quietly passed by until Chancellor Merkel took up the Presidency of the European Council. She declared her will to save the essential institutional reforms of the Treaty for drawing up a Constitution for Europe, solemnly signed in Rome on 29 October 2004. After that, with all due respect to the signatory members and the 18 ratifications, certain obstacles had to be circumvented - like the referendums in France and the Netherlands and the heralded rejection in case of a referendum in Great Britain. Making a symbolic sacrifice the three-star constellation of Angela Merkel, Nicolas Sarkozy and Jose Manuel Barroso successfully preserved the essentials for bringing the European Union to a still more effective and democratic adjustment. The Constitution produced a mini-treaty thus unfreezing the integration process. The European Council in Brussels revealed the usual cleavages and diversity characterizing the Union of 27. Since the Hague Congress of 1948 Great Britain, faithful to its traditional policy, has positioned itself by means of intergovernmental and cooperation methods as the leader of a group of countries, keeping away from the couple France – Germany and the Euro zone countries which favor the community or federal method. The cleavages, which vary depending on sectoral interests, intersect with division lines concerning the dilemma whether to give priority to the deepening of enlargement, i.e. to political Europe, over market-focused Europe. The principal lesson from the debates and confrontations during the long sessions of the European Council in Brussels is that in spite of the retreat from the community spirit and the indecent affirmation of Poland's interests by the twin brothers, and in spite of Premier Blair's obstinacy, the threesome managed to save the essentials of the progress underlying the Constitution for Europe.

This success highlights the fundamental role played by the leaders, the European Council comprised of the heads of state and government of the member states and the President of the European Commission. The European Council and its dynamic core will be asserted from now on as the highest political authority of the European Union.

Hope in Europe was reborn in 2001 when the European Council gathered in Laeken, Belgium, on 14 and 15 December 2001 to convene the European Convent on the future of Europe. On 13 June and 10 July 2003, the Convent adopted by consensus the draft Treaty establishing a Constitution for Europe. In April 2003, in the course of many exchanges with President Valery Giscard d'Estaing, I formulated my personal proposals which I addressed to Presidium members and to a couple of Convent members, as well as to the Premier of Portugal Jose Manuel Barroso. Here is an excerpt of these: „One particular observation is evident at first sight: the text is long and complicated in spite

¹ The views expressed in this paper are the views of the author only.

of editors' efforts¹. It does not meet legibility and transparency criteria. Along with the brief and clear articles on the institutions, there are long articles with technical details on the Court of Justice or the internal market and common policies². As a result there is a disequilibrium making it difficult to read the draft, which had to be succinct, limpid and easy to understand by Europeans. Apart from the principles regulating the sharing of competences and functions, the more detailed definitions and norms on common policies, which may vary according to the political majority, should be reproduced as basic laws in annexes to the central text of the Constitution."

The same is true of the Common Foreign and Security Policy and the Charter of Fundamental Rights. If the balance is not changed, this will cumber legibility and make it more difficult for the Constitution to reach the hearts of the Europeans.

While avoiding any breaking off with the topical draft Constitution for Europe, these adjustments should result in improvements if two parts are differentiated: one devoted to the Constitution itself - it should be rendered concise, simple and legible; and a second part comprised of the basic laws, the protocols and the Charter of Fundamental Rights.³

To strike a concise balance of the work of the European Council under the German Presidency, I will review the basic points of progress within the European Constitution and the agreed upon concessions, all viewed from the perspective of the future European federation.

A new modified Treaty

The modified Treaty reforms the „Treaty on European Union“ and the Treaty establishing the European Community; henceforth it is called „Treaty on the Functioning of the Union“. It will be drawn up by the Intergovernmental Conference before the end of 2007 and has to be ratified before the European elections in June 2009. Its mission is to reinforce the democratic efficiency and legitimacy of the enlarged Union and to improve foreign affairs coherence. This treaty supersedes the Treaty establishing the Constitution. The term „constitution“ is eliminated from the official vocabulary in order to avoid the referendum sword of Damocles. An appellation is sacrificed insofar as it evokes in some minds the monster of a European super-state. An interpretation which I contest in the name of questing for a new European federalism, free of etatic prejudices. Let us consider an undeclared federation where the states play a major function compared to the regions, towns, public communities and socio-economic actors exercising shared sovereignty. The Constitution vanishes and so do a number of symbols like the European flag and hymn, which by the way are part of the tradition. The same thing happens to the principle of primacy of community over national law which is however dedicated to the jurisprudence of the Court of Justice. A similar observation will be established if the requirement for actual and free competition preserved in the EC Treaty is abandoned.

On the other hand an important step is overcome: the Union preserves one single lawmaking subject. Of course, the Charter of Fundamental Rights is no longer part of the simplified treaty, but the Union recognizes the rights, freedoms and the principles proclaimed in the Charter of 7 September 2000, they are confirmed at the Intergovernmental Conference in 2004 and the

¹ Will the distribution of this text at the moment of parliamentary ratification and most of all before referendums not create a risk of obscuring the European debate and even provoking negative reactions? The Danish experience proves that this is not only a theoretical hypothesis.

² The court is devoted disproportionately large space compared to the other institutions of the Union. Therefore, thirty or so articles and over 10 pages could be included in an annex.

³ This text, in German translation, was published in SIDJANSKI: Europa auf dem Weg zu einem neuen Federalismus, Berne, Haupt, 2004, p. 147 – 148.

Charter is attributed the same juristic value as the treaties. In order to have the protocol annexed to the treaties, and as the Charter is legally restricting, the European Council accepted that it is not applicable only in Great Britain, insofar as the Charter concerns rights set forth in Great Britain's proper legislation. At the same time and in the spirit of compromise the mechanism for control over subsidizing was reinforced as was the participation of national parliaments. Need I remind that subsidizing plays a role in both directions – it favors the development of certain public domains (energy sector, environment) but it can also be viewed as a restriction. On the whole all modifications agreed are at the expense of the community method. This is also true of the voting system where double qualified majority is applied.

Qualified majority is formed by not less than 55% of the Council members, i.e. 15 out of a total of 25, representing 65% of the population of the Union. This new rule takes account of the reinforced majority of states and peoples which brings into play the federative principle of double representation. It is applied when the Council decides on a proposal by the Commission. On the other hand, when the Commission or the European minister of foreign affairs, now called „High Representative“ as demanded by Great Britain, does not formulate a proposal expressing common interest, a majority of 72% of the members, representing 65% of the population, is required. By introducing the population criteria this procedural innovation aims to restore the equilibrium between the big member states and the increased number of small and medium-sized states. Besides, this new rule underlines the importance of the Commission's proposals, the criteria whereof is found in all Community treaties. In a similar line it attributes the same weight to proposals by the High Representative. From that point of view future progress will depend on the elimination of obstacles like unanimity, but the principle of the majority will nevertheless be observed. As a concession to Poland, the new system will take effect from 1 November 2014 on and not in 2009; this is an extra term to which a transitional period till 31 March 2017 is added.

Poland's demand appears all the more as a venture to affirm its own prestige and an untoward interpretation of joint solidarity. In practice, however, the Council will seldom proceed to voting. In most cases it will strive to obtain consensus. In this process the qualified majority allows avoiding possible paralysis and accelerates approaching a consensus. In any case the influence of member states does not depend solely or principally on the number of votes. The example of Luxembourg is a proof of that.

In their entirety and without changing the foundation, the two treaties have the same juristic value and reproduce the institutional system adapted to needs: new way of composing the European Parliament, who is the big winner; the European Council will become an institution headed by a permanent president; besides adopting a new voting system, the Council will undergo changes concerning the half-year presidency; the composition of the European Commission will be changed and the role of its president - reinforced.

The European Parliament

The European Parliament comes out of the Convent stronger, thus democracy in the Union expands in dimension. Besides its legislative and budgeting functions, it consolidates its powers for political control over the Commission and the President of the European Electoral College and its authority becomes stronger. It proposes initiatives to the Commission, receives petitions, nominates the European mediator and is empowered to constitute inquiry committees. This outfit of instruments which brings it closer to citizens, remains incomplete without the possibility to proceed to auditions indicating the pulse of the society.

The President of the European Council

The big innovation is the figure of the President of the European Council who is elected by a qualified majority. The president directs and leads the work of the European Council, securing continuity in cooperation with the president of the Commission on the basis of the work of the General Affairs Council. Besides, he contributes to facilitating the cohesion and consensus within the European Council. He represents the Union in external relations on heads of state or government level regarding matters of Common Foreign and Security Policy without prejudice to the competences of the High Representative of the Union and, I would add, „neither to those of Commission's president“. In fact the frequent meetings and the international representation of the Union require the presence of both presidents and the High Representative. What is more, foreign policy has a strong economic dimension while security largely goes beyond the narrow meaning of military security and tends to encompass economic, social and cultural as well as scientific and technological activities. If the European Council acts preferably by consensus, this nevertheless does not exclude voting by qualified majority for the election of its president, thus opening up an opportunity for simple majority in voting on procedural rules. The progressively increasing confidence in the practice of collaboration should permit the European Council to extend and generalize the field of qualified majority in the future.

Double presidency within the Community system

In case of double representation the exercise of representative power rests on two institutional pillars – the European Council and its two right hands, namely the Councils of Ministers and the European Executive embodied by the European Commission. Outside its role of personalized presidency, the European Council will take full responsibility for the orientations and general strategies defined in the fundamental text. I would add also for the economic and monetary policy in the future at the proposal of the Commission, as well as in external relations, security and defense. So even in matters of high policy decisions would be more or less long-term ones, within the competence of the European Council when acting on a proposal by the Commission. Concerning the executive, it will be a joint action of the Council for Foreign Affairs chaired by the High Representative, and of the Commission. This generalized application of the community method guarantees efficiency and at the same time assures democratic control by the European Parliament over the Commission and its Vice-President.

Making fundamental decisions on behalf of and for the Common Foreign and Security Policy (CFSP) and the European Security and Defense Policy (ESDP), which rest on specific procedures, should also be carried out in a federative perspective within the competence of the European Council and acted on a proposal by the Commission. To a large extent foreign policy coherence and effectiveness are function of community proposals, which should be elaborated by the Commission and the High Representative, then finalized in close collaboration with the Council of Foreign Ministers presided by him. Thus decision-making will be based on the visions of the community. What is more, in this configuration the European Parliament can exercise control. This distribution of tasks meets the required levels of political power and democratic control: the more the problems reflect high policy, the more necessary is the engagement of the European Council, but engagement resting on proposals made by the Commission, which alone is responsible before the European Parliament. Obviously there could be no true foreign policy without the European Council and president of the European Council; without a proposal by the Commission and the authority of its president there could be no Union speaking in one voice and acting in agreement

under the eye of the European Parliament. In this vision the individual initiatives and steps of a member, whatever its political weight, or of a group of members, would be channeled through the Commission's proposals and European Council's decisions.

The role of the High Representative

According to the French-German proposal „the European minister of foreign affairs (transformed into a High Representative) relies on a European diplomatic service which combines the General Directorate of Foreign Relations of the Commission and a foreign policy unit“. This pattern will allow emergence of European diplomacy, which will implement the Union's foreign and security policy.¹

The cleavage is the principal obstacle, indeed a gap that impedes the Union and separates community affairs from the affairs of common foreign, security and defense policy. In those legal domains the Commission can act independently or through its intermediary the High Representative who has the prerogatives to present proposals on behalf of the Commission. There is certainly room for more responsibilities and the door stays open in front of the European Parliament. Of course, consensus on these sensitive matters is imperative. The President of the European Council and the High Representative who preside the Council on Foreign Affairs have the task to facilitate consensus. From that point onward they will contribute to taking decisions within the institutional framework and avoid bypass ways like „the letter of the eight“.

If we assume that the European Council together with the President of the Commission and the High Representative are the sole instance capable of elaborating a true common strategy and implement it in foreign policy, we should also assume that the presence of the Commission induces to limiting the domination of the Grands which tend to multiply their outer community actions. The community scope permits member states, both big and small, to have their voice better heard and to influence decisions. From that point onwards they could concentrate their efforts on enhancing the role of the Commission in the process of preparation and implementation. History provides evidence that the Commission is the best guarantor of the common interest and the democratic equilibrium within the Union. As for what is left of the unanimity and the likely threat over the good functioning of the Union, a flexible clause would settle the necessary developments ahead.

In any case we observe that the cleavage is not between the Grands on one part and the remaining member states on the other as we used to believe. Actually coalitions are built and dismantled depending on the case in point, the specific interests and intensified relations at given moments. The crisis in Iraq divided alike the Grands, the medium-sized and the small member states. In the long run, since the Commission is the sole institution responsible before the European Parliament, its participation in the decision making is an indispensable element of the democratic system of the Union. That is, its composition and power will be crucial for the good functioning of the enlarged Union.

However, there is some ambiguity regarding the double subordination of the High Representative who, being a Vice-president of the Commission, also bears joint responsibility. Of course, he hands in his resignation as a member of the staff, but nevertheless remains in function. This situation should not occur if the community method is adopted in this domain; its logical consequence would be a collective or individual responsibility of all Commission members. Following the logic of the community principle, the decision making procedure in the European Council should evolve

¹ Despite that the constitutional process is stopped, proposals are being studied for setting up a European diplomatic service and institutionalizing an instrument for prevention of natural disasters or catastrophes caused by human activity.

towards more frequent resorting to qualified majority and application of the constructive abstention foreseen in the Treaty of Amsterdam. It could prove very useful in the future if a distinction is made (as proposed at the time of the Spinelli and Tindemans projects) between the global issues concerning all member states and those of limited relevance. Besides, on a proposal by the Commission, the European Council should be able to mandate a state or a group of states and the High Representative on various demarches like, for example, in the case of Iran or Israel-Palestine relations. The increased capacity for decision making and implementation indispensable to the European Union should provide conditions for the Union to become a major actor and an international pole in a multipolar world along with the USA and emerging global powers like China, India, Japan and Brazil.

Significant progress was made through flexibility and differentiation as proven by the euro and the Schengen Agreement. On the same lines intensified cooperation corresponds to the important principle, according to which one member state or a group of them may decide to act as avant-garde or pioneer pith if approved by the other member states on the condition that an opportunity is left open for them. This dynamic core will draw in its wake those who did not have the will or the means to get involved in the beginning. This is a promising way for the future.

Towards a two-chamber legislative system. The Council: confusion or division of powers?

Together with the Commission the Council performs a key role in the decision making chain of the European Community. Acting on proposals by the Commission and increasingly in co-operation with the European Parliament it represents in fact the final stage in the legislative process of the European Community. Its role in adopting the community policies proposed by the Commission and its executive powers which it often shares with the Commission, reinforce its position in the community system. Like Janus, it has two faces – one of legislative power and the other of government power. With the extension of the legal domains of the European Union the council became a main holder (along with the European Council) of the new competences attributed to the Union under the name of CFSP (Common Foreign and Security Policy). In fact this policy is in the focus of the debate on whether the character of the European Union is intergovernmental or federative. Its original ambiguity is not unconnected to the fact that it is subject to control by the European Parliament in its capacity of community legislator (its natural role), but also in rarer cases when the parliament takes governmental decision. The absence of division of powers brings to a paradoxical situation: the Commission which makes up proposals, is subject to the democratic control of the European Parliament, whereas the Council which makes decisions, escapes parliamentary control in exercising its governmental power. Montesquieu has not stopped by in Brussels yet, has he?

In the legislative process of the European Community the Commission formulates the proposals and makes efforts to preserve both the coherence and the equilibrium of the community norms. Step by step co-decision has expanded reinforcing the powers of the European Parliament and the capacity of the Council thanks to the extension of qualified majority. Despite the modest progress achieved in Nice, the general tendency is oriented towards more democracy, better efficiency and greater transparency; but also towards *two-chamber legislative power*. The double participation of the member states and peoples of the Union is indicative of the evolution of the European Community towards a federative system. Hence the proposal of the Convent to constitute a Legislative Council. As often the case, the division of the Council powers was reversed to its starting point when the finishing touches were put at the Intergovernmental Conference. Thus the ambivalence of the

Council was not only preserved but also accentuated, since further to the legislative functions it will also increasingly assume from now on governmental functions as the Union expands its powers in the field of foreign policy, security and defense. The confusion of powers is the childhood disease of the Council.

At the same time the prerogatives of the European Parliament take different forms which approximate them to national parliaments: democratic control, prerogatives to approve the budget, to approve and appoint, to approve activities, to inquire and audit, to start initiatives and implement policies. These mechanisms elucidate the activities of the European Union insofar as the European Parliament is *the only transparent institution*, whose communicative function contributes to the opening of the Union to the European society.

A Council of States

The German government made proposals which bring back the ideas of Karl Lamers and Wolfgang Schäuble.¹ The Commission was to become a European government whereas the Council was to be transformed into a Chamber of States outside the European Parliament. This transformation was also proposed by the European Youth Convent in Brussels on 12 July 2002. Of course, this pattern has the advantage of simplification and in essence it is a breaking off with the institutional experience of the Union, but nevertheless it stays within the scope of the federal vision for double participation of the member states and the European citizens.

As President Rau put it: „We already possess the foundation stones to build a European federation of nations-states. We only have to fill up the amount on hand, assemble it and mould the architecture“².

The concept of the federation of nations-states was launched by Jacques Delors. Federation of European States and Peoples seems to be a more suitable appellation, because some states in Europe, like Belgium for example, are not nations and some nations are not states. This particular architecture has its source of legitimacy in the double representation of citizens in the European parliament and in a Chamber of States. According to Joschka Fischer „a choice should be made between a model of a senate uniting the senators from the member states who will be elected by direct suffrage and a chamber of states similar to our Bundesrat“³. Unlike the egalitarian representation of the member states in the US Senate or the Cantons in the Council of the States of Switzerland, the distribution of the seats in the Bundesrat takes account of the variable dimensions of the Länders (4 Länders have 6 seats each, one has 5, 7 Länder have 4 seats each and 4 have 3 seats each, or total 69 seats). This example is often referred to in support of the equilibrium of votes in the Council of the European Union and it should serve as a model for the distribution of the seats in the Council of States.

The European Commission – the driving force of the Union

Being an authentic and autonomous institution, the Commission has the right to initiative and proposals in addition to the powers of surveillance and governance. It is the only institution entrusted with real powers and is *responsible for expressing the general European interest*

¹ CDU/CSU-Fraktion des Deutschen Bundestages, Bonn, 1er septembre 1994.

² „Une Constitution fédérale pour l'Europe“, Le Monde, Paris, 4 novembre 1999

³ „L'Europe Unie selon Joschka Fischer“, Le Monde, Paris 14-15 mai 2000, the official title of the discourse is „From confederation to federation, reflection on the finalization of European integration. The experience the European Parliament went through lead to the elimination of the double mandate.“

based on a global and objective vision and for promoting political norms and lines of action in a community perspective. However, the pivotal role which the Commission plays as a first pillar of the community in the EC Treaty, is reduced to a marginal role in the Common Foreign and Security Policy and in the subsystem for emergency actions; same, although to a lesser extent, in foreign affairs and justice.

Depositing different systems creates dysfunctions, disequilibrium and waste.

The European Commission as the main driving force of integration has the authority to assume governance within the Union. Evidently it is the only institution composed of full-time officers, enjoying sufficient autonomy to act as counterbalance to the national interests represented by the Councils. It is the principal guarantor of global cohesion within the Union. To maintain its role after the enlargement it has to reinforce its staff and effectiveness by limiting the number of employees and making its small administration more dynamic. The Commission has long experience in performing on behalf of the European Community (with ups and downs, of course) its role of an institution for promotion of initiatives and formulation of proposals. On the whole this is a political task, not only a legal or administrative one. By accomplishing this role, the Commission takes the part of the balancer, assures equilibrium, and launches modalities of shared sovereignty avoiding permanent coalitions.

The steps and moves of the Commission are often based on consultations with experts, principal actors and interested countries; the Commission pursues as balanced and objective solutions as possible in order to preserve the interests of medium-sized and small member states, while taking account at the same time of the interests of the Grands. This explains the attachment of the small member states to the independent role of the Commission. Often defended in the past by the small and medium-sized member states, the Commission also defended them at Intergovernmental Conferences. According to attestations these countries experience difficulties in affirming their interests within the large intergovernmental structures dominated by the grand member states. In exchange, within a community or federative system the Commission strives to keep the course of common European interests by tendering proposals and active negotiations, thus maintaining the equilibrium among all members. Hence the importance of reinforcing the authority of the Commission and its political capacity within an enlarged Union. On the same lines the whole package of articles envisaging reinforcement of the authority of the President of the Commission and the principle of community solidarity is introduced in the simplified treaty as well.

The key role of the Commission is manifested in the relation between the qualified majority and the authority of the Commission. The proposals of the Commission, which take account of the general interest and balance between various state interests and sectors of activities, facilitate the extension of the qualified majority rule. But to be able to exercise effectively its responsibilities and meet the expectations of states, regions and peoples, the Commission has to rely on a direct basis of legitimacy and to develop its governance capacity. The surplus of democratic legitimacy could result in too great intervention on the part of the European Parliament and the European political formations in the election of the President of the Commission and during the investiture of the College.

The Commission should focus with priority on its political function of leadership which requires reflection, capacity to evaluate and a spirit of innovation and impulse. To promote, stimulate and orientate to well-considered medium and long-term objectives and to secure, if necessary, consistency and coordination, are necessary elements for governance at any level - European, national, regional or local. Multiplicity and rapidness in communication requires in return grand capacity for analysis, vision and strategy. The price for this is to concentrate on the essential function of governance. Such general revision, developing simultaneously with

the reform of the Commission, is as necessary as the need for the College to increase its role in the common foreign and security policy. In order to assume its role of an active community institution, the Commission has to concentrate less on management and more on governance and the European public good.

The modified treaty seeks to consolidate and enlarge the role of the President who obtains his double legitimacy from being designated with qualified majority by the European Council and from being elected by the European Parliament. Following that logic, the European Council takes account of the results from the elections for European Parliament and proceeds with „appropriate consultations“ in its choice of a candidate whom it proposes to the European Parliament. The parliament in turn elects the President of the Commission by majority of its members. In this chapter Jacques Delors proposes that each one of the two grand political formations or a coalition of other political groups choose their candidate. This proposal aims to make more tangible and effective the link between the vote of citizens and the election of the President of the Commission and consequently to stimulate the participation of Europeans in elections. Voters also have to perceive clearly this link which accords them greater power in choosing a President of the Commission.

The designation of the Barroso Commission members definitely endorsed the practice according to which the commissioner from a given country is not only proposed but is actually imposed on the president by the national government. Would it not be wiser in the future to let the President choose the Commission members in consultations and in accord with the governments? This is the idea of President Sarkozy. Thus the College, formed as a team, would be subject to approval by the European Parliament after auditions of the parliamentary committees similar to the formation of the Barroso Commission. With this innovation the leadership of the President will be rendered more effective from the very beginning, facilitating at the same time the sense of collegiate administration. The President decides on the internal organization of the Commission in order to secure the coherence, effectiveness and collegiate administration of its actions. He also has the power to nominate the vice-presidents excepting the High Representative who is nominated by qualified majority of the European Council in consent with the President of the Commission. The President can also require the resignation of a member of the Commission. In a very significant way the President defines the orientation framework within which the Commission exercises its mission.

The composition of the Commission as stipulated in the Constitutional Treaty and confirmed without modifications in the Modified Treaty poses serious problems. The system of „egalitarian rotation“ of the members is far from satisfactory. The formula laid down in the European Constitution creates a core of 15 decision makers and 12 other members without voting right. The envisaged rotation guarantees the successive and egalitarian participation of all members. It is still to be seen whether this equality of states in the distribution of commissioners will not weaken both the Commission and the community principle. In fact the members from Malta will exert the same prerogatives in decision making as those from Germany, no matter that in terms of human resources the two countries stand in an utmost contrast. Besides, the egalitarian rotation translates the implicit idea that the commissioners would be „representatives of their states“. However, this image of the media is in contradiction with the independence of the Commission whose members do not take external mandates. Those observations call for reflection on the possibility to confer on the President elect the choice of the members of his team. He could make it on the basis of a list comprising two or three candidates from each state. Another innovation is also to be highlighted: the reduction by two thirds of the members stipulated in the Treaty could be modified by the European Council by unanimous vote. Thus an opportunity for a mini-reform

is envisaged and it could constitute a precedent to follow.

The solution proposed by President Prodi retains the formula of one member per state¹, but seeks to compensate the burden of a Commission of 25 members by putting in place a kind of a ministerial cabinet of seven members, each one of them assuming presidency over one group of sectors.² Although it is a step back from equality, the formula would leave a margin for the President's choice of seven vice-presidents, leaders of the subgroups, and would provide conditions for distributing tasks according to competences. In consequence, as the commissioners are elected by countries and maintain contacts with all member states, the Commission should be able to function effectively, to reinforce its political authority and prefigure a European government.

A lot of other solutions are envisaged: rotation on the example of the general advocates in the Court of Justice; commissioners and deputy-commissioners coming for certain countries and groups of countries.

The future role of the federalist core

Analyzing some thirty cases of integration and disintegration, Karl W. Deutsch arrives at the conclusion that every time the process of uniting of states comes to an enduring union like, for example, the United States of America or Switzerland, this union is built around a dynamic federalist core (Deutsch et al. 1957). The need to reinforce the dynamic core within the European Union was clearly announced in „Reflections on European Politics“ by the parliamentary group of CDU/CSU³ in 1994.

To avoid the risk of erosion within the European Union due to the diversity or divergences turning up in the process of enlargement and even the resurgence of nationalism and reemergence of regional identities, the authors of this document preconceive one priority: „institutional development of the Union, implementation of the subsidiarity principle (without transferring competences at infra-national level) and establishment of a European government; reinforcing the „hard core“ of the Union (I prefer the less restrictive term „dynamic core“ or „federalist core“) and qualitative intensification of French-German relations; reinforcement of the external capacity of the Union in foreign policy and security matters; enlargement of the Union across Central and Eastern Europe“. The authors of this text see the deepening is a condition for enlargement, insofar as without internal consolidation the Union would not be able to fulfill its immense tasks. They underline the risk of instability - it could result from a transformation, even dissolution of the Union into a loose group of states or a zone of „ameliorated“ free exchange. Inspired by the attempt to construct a federal state and the subsidiarity principle applicable at different state governance levels but also in public and private sectors, the objective envisaged is to increase the capacity for action of the Union and to lay out the fundamentals of democratic and federative processes. From that point onward there will be increasing need to resort to differentiation and to the federative core within the Union of 27, where diversity prevails over unity. The flexibility clause was resumed in the modified treaty but with reduced general scope as it cannot serve as a fundament for attaining the relevant objective of the Common Foreign and Security Policy (CFSP).

¹ Former European Commission President Jacques Delors also opted for a Commission of 25 members

² This number of 7 corresponds to the number of the members of the Federal Council of Switzerland. For reasons of overloadedness, it is proposed to increase this number and fill out their secretariat by resorting in particular to the state secretaries

³ CDU/CSU – Fraktion des Deutschen Bundestages, Bonn, 1-er septembre 1994. Authors of these proposals are Karl Lamers and Wolfgang Schäuble.

A provisional assessment

For the time being only a provisional assessment could be made while awaiting the definitive text which is to be finalized before the end of 2007. Among the most revealing examples some steps of progress and some of regress could be cited. The definitions of the acts of the Union masks a return to the point of departure: the denominations „law“ and „framework law“ are substituted for the classical definitions of regulation, directive and decision. On the other hand the distinction between legislative acts, delegated acts and acts of execution is maintained. Many provisions will be simply resumed, like sharing competences between the Union and the member states; others, like the article on energy, will be complemented with a reference in the spirit of solidarity and a new point about promoting the interconnection of energy grids. Similarly, the article on environment will put an accent on the particular need to fight climate changes by taking measures at international level. This addition expresses the will of the Union to pursue its pioneering role.

A new mechanism in the judiciary will allow certain states to register progress in some cases, while others will not participate and differentiation will be emphasized. Insofar as the mini-treaty resumes the advanced principles of the Constitution and respects the general structure, the hopes of Europeans will not be disappointed. It is also possible that the burdensome procedure of ratifications may expose the Union to the threat of veto and paralysis. Presently we can only wish that this modified treaty comprising two treaties will command a unique personality with a potential to contribute to the development of the Union from 2009 on. Actually with a few exceptions the new treaty complies with the orientation towards a European federation model. Only when this new modified treaty begins to function we shall be able to evaluate its effectiveness and real contribution to the federal future of the European Union.

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Prof. Sidjanski is the author of many books and studies in the field of European integration. He is fluent in French, Serbo-Croatian, Spanish, English, Italian, Greek, German, and conversant in Russian.

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