

The simplified European Treaty and the future of the European Federation¹

Once again, the European Council reached an agreement on the reforms to be made to the Constitution just before 23 June 2007. Its desire to create a “Constitution for Europe” was thwarted by two of the founding members of the European Community, France and the Netherlands, who voted no. With the Constitution stopped dead in its tracks, the Commission adopted a pragmatic strategy made up of concrete projects and achievements, such as its energy and environment initiatives. Meanwhile, everyone was taking the time to think things over until Chancellor Merkel took over the Presidency of the European Council. She openly stated that her ambition was to save the core of institutional reforms in the Treaty establishing a Constitution for Europe which was solemnly signed in Rome on 29 October 2004. From then on, while respecting the signature of all the Members and the 18 ratifications, the idea was to work around the problems raised by the French and Dutch referendums and by the announcement that the Constitution would be rejected if a referendum were to be organised in the United Kingdom. The combination of three key figures, Angela Merkel, Nicolas Sarkozy and José Manuel Barroso, helped, after many symbolic sacrifices and a great deal of pruning, to save the essential elements for a more efficient and democratic European Union. The Constitution gave birth to a mini-treaty and gave new impetus to the integration process.

The European Council in Brussels highlighted the traditional rifts and diversity that characterise the 27-Member Union. Since the Congress in The Hague in 1948, the United Kingdom, faithful to its traditional policy, has been the leader of a group of countries which values the intergovernmental or cooperation method as opposed to the Franco-German group including the countries of the euro zone which prefers the community or federal method. This division, which varies according to sectoral interests, is part of the numerous disagreements as to whether priority should be given to enhancement or enlargement and whether Europe should be political or market-oriented. The main lesson learned from the debates and confrontations that took place during the long days in Brussels at the European Council meeting is that despite the increasing lack of community spirit and the twin brothers’ indecent

¹ *The views expressed in this paper are strictly personal and only those of the writer*

assertion of Poland's interests and despite Prime Minister Blair's stubbornness, the troika managed to save the essential progress made in the Constitution for Europe.

This achievement reminds us how important the political figures, the European Council made up of Heads of State and Government and the President of the European Commission really are. The European Council with its dynamic core has now taken its place as the highest political authority within the European Union.

In 2001, Europe felt a new surge of hope when the European Council met in Laeken, Belgium, on 14 and 15 December to convene a European Convention on the future of Europe. On 13 June and 10 July 2003, the Convention adopted the draft Treaty establishing a Constitution for Europe by consensus. In April 2003, during the many meetings I had with President Valéry Giscard d'Estaing, I drafted some proposals of my own addressed to the members of the Praesidium as well as the Portuguese Prime Minister José Manuel Barroso. Here is an excerpt from this document: "The first observation I would like to make is to state the obvious: the text is long and complicated despite all the efforts made by the drafters². In this sense, it does not meet our requirements in terms of legibility and transparency. Alongside short straightforward articles you find endless technical articles on the Court of Justice or the internal market and common policies³. This results in an imbalance which makes the draft difficult to read when it was supposed to be short and clear, readily understandable by the Europeans. Apart from the principles governing the distribution of competences and the procedures, the more detailed definitions and norms on common policies that vary depending on political majorities would be annexed to the core Constitution document as Basic Law. The same would apply to the CFSP and the Charter of Fundamental Rights. Without modifying the balance of powers, this is the price to be paid for a more legible text where the key elements of the Constitution have a greater impact on the citizens. While avoiding any fundamental changes to the current draft of the Constitution for Europe, these rearrangements would result in a more structured constitutional part of the document

² By disseminating this text during the ratification period and more importantly just before the referendums, don't you think it will complicate the debates on Europe or even provoke negative reactions? The experience in Denmark proves that this remark is not purely theoretical.

³ The Court of Justice takes up a disproportionate number of pages compared with the other institutions of the Union. By changing this, around 30 articles and more than 10 pages could be transferred to the annex.

which is concise, simple and legible. The second part of the text would include annexes on Basic Law, protocols and the Charter of Fundamental Rights.”⁴

To briefly present the outcome of the European Council under the German presidency, I suggest we take a look at the major developments included in the European Constitution and the concessions made, while bearing in mind the future European Federation.

A new reform Treaty

The reform Treaty replaces “the Treaty on the European Union” and the EC Treaty now called “Treaty on the Functioning of the Union”. It will be drafted by the Intergovernmental Conference (IGC) before the end of 2007 and must be ratified before the European elections in June 2009. Its mission is to reinforce the efficiency and democratic legitimacy of the enlarged Union and to improve the coherence of its foreign policies. This Treaty replaces that of the Constitution. The use of the term Constitution has been banned from official terminology to stave off the sword of Damocles that hangs over referendums. We are sacrificing this word because it may bring to mind the ghost of a European Super-State. I reject this interpretation and will strive to find a new European federalism free from all State prejudices. A totally new Federation in which States play a major role alongside regions, cities, public institutions and socio-economic players with shared sovereignty. The Constitution has disappeared and along with it the mention of many symbols such as the European flag and anthem which are in fact part of tradition. The same goes for the principle of the primacy of community law over national law even though it has been laid down in the case law of the Court of Justice. The notion of non-distorted and free competition has likewise been abandoned even though it still exists in the EC Treaty.

However, an important step has been taken: the Union is still a unique legal personality. It is true that the Charter of Fundamental Rights is no longer part of the simplified Treaty but the Union recognises the rights, freedoms and principles stated in the Charter of 7 December 2000 decided upon at the 2004 IGC and gives it the same legal value as the Treaties. To make sure that the protocol annexed to the Treaties - according to which the Charter is legally binding - is adopted by consensus, the European Council has accepted

⁴ Translated into German, this text was published in ‘Dusan Sidjanski: Europa auf dem Weg zu einem neuen Föderalismus’ Berne, Haupt, 2004, p147-148.

that it is only applicable in the United Kingdom when it covers rights included in its own legislation. Moreover, as a compromise, the control mechanism of subsidiarity has been reinforced and the participation of national parliaments enhanced. There is no need to remind you that subsidiarity works both ways, either in favour of the extension of certain common areas (energy, environment), or in favour of restriction. All in all, most of the modifications endorsed are to the detriment of the community method. This is the case for the double qualified majority voting system.

The double qualified majority is made up of at least 55% of the Members of the Council, including 15 out of the 25 Members and representing 65% of the population of the Union. This rule is innovative in that it takes into account the reinforced majority of the States and the population therefore applying the federal principle of double representation. It is applied when the Council rules on proposals put forward by the Commission. However, when the Commission or the European Minister for Foreign Affairs, renamed High Representative following a request made by the United Kingdom, does not submit a proposal reflecting common interests, the majority required is 72% of Members representing 65% of the population. The objective of this procedural innovation is to create a balance between the large Member States and the increasing number of small and medium Members by introducing the population criterion. What is more, this rule underscores the importance of the Commission's proposal, as is the case in all the Community Treaties. In the same spirit, it gives equal weight to proposals made by the High Representative. From this point of view, the next step forward would be to eliminate the obstacle of unanimity and, thus, generalise the majority rule. As a concession made to Poland, the new system will come into force on 1 November 2014 instead of 2009. This extended timeframe has been completed with a transition period until 31 March 2017.

Poland's demands seem to stem from their desire to assert their role and an unfortunate interpretation of community solidarity. Yet in practice the Council rarely uses votes. Most of the time, the Council tries to reach a consensus. During this process, the qualified majority system helps avoid deadlock situations and makes it easier to move quickly towards a consensus. In any case, the influence of Member States does not solely depend on the number of votes, if at all. Luxembourg is a recurring example.

In general and without having changed the substance, both Treaties have the same legal value and have preserved the institutional system while adapting to meet various needs. The new make-up of the European Parliament has made it the greatest winner. The European Council has not only been transformed into an institution of the Union and given a permanent President but its voting system has also been changed and the six-month presidency should be modified. And finally the European Commission whose composition will be modified and whose President will play a more important role.

The European Parliament

The *European Parliament* has been reinforced by the Convention, giving a more democratic dimension to the Union. In addition to its legislative and budgetary mandate, it will have consolidated political control over the Commission and the President of the European College. This way, it is strengthening its authority. It exercises its power of initiative through the Commission, receives petitions, appoints the European Ombudsman and has the power to set up a commission of inquiry. This wide range of instruments which bring it closer to the citizens of Europe will remain incomplete if the Parliament does not have the power to organise hearings with the population and really have its finger on the pulse of European society.

The President of the European Council

The greatest innovations affect the *President of the European Council* elected by qualified majority. The President directs and moderates the work of the European Council and is in charge of the preparation and follow-up of this work in cooperation with the President of the Commission, based on the work of the General Affairs Council. His or her mandate is to facilitate cohesion and consensus within the European Council. The President represents the Union in its relations with foreign Heads of State or government on common foreign and security policy (CFSP), without undermining the role of the High Representative of the Union nor, I might add, “that of the President of the Commission”. The many meetings that have been added to the international representation of the Union actually require the presence of two Presidents as well as that of the High Representative. Especially since foreign policy has a strong economic dimension and security goes well beyond the limited concept of military security and tends to include activities which can be economic, social and cultural as well as

scientific and technological. Although the European Council prefers to reach a consensus, it does not completely reject the qualified majority voting system that is used to elect its President. This opens up a loophole and, because it is written in the regulations, a simple majority vote is used to adopt procedural rules. Gradually, the cooperation process should build the trust that the European Council needs to extend and mainstream the qualified majority system in the future.

3. A double presidency within a community system

In the case of the double presidency, exercising governmental power relies on two institutional pillars: the European Council and its right-hand men – the Council of Ministers – on the one hand and the European Executive represented by the European Commission on the other. In addition to its role as a customised presidency, the European Council will have full responsibility for the general orientations and strategies defined in the fundamental text. And it is important to note that this will also be the case for *proposals* put forward by the Commission whether they concern economic and monetary policies, external relations or security and defence. Therefore, even in these highly political areas, the decision would be in the hands of the European Council following the proposals of the Commission (in the short or long term). As for the execution of these decisions, it will be jointly ensured by the Foreign Affairs Council chaired by the High Representative and the Commission. This is an overarching application of the community method which guarantees efficiency while ensuring that the European Parliament has democratic control over the Commission and its Vice-President.

Fundamental decision-making in the name of the CFSP and CESDP based on a specific procedure should be carried out in a federating perspective by the *European Council following proposals made by the Commission*. A coherent and efficient foreign policy relies greatly on the joint proposals which should be drafted by the Commission and the High Representative in close cooperation with the Council of Foreign Affairs Ministers which he chairs. This way the debates will focus on proposals in which a common vision is expressed. In addition, in this configuration, parliamentary control could be ensured by the European Parliament. This distribution of roles meets the requirements in terms of political power and democratic control – the more politically important the issues are, the more the European

Council is involved, basing its work on the proposals of the Commission which is accountable to the European Parliament. It is clear that without the European Council there can be no real foreign policies and without the President of the European Council or the Commission's proposals and the authority of its President there can be no common voice within the Union and no common acts before the European Parliament. In this framework, the individual initiatives and measures taken by any Member or group of Members, regardless of their political weight, would be channelled through the proposals made by the Commission and the decisions made by the European Council.

The role of the High Representative

Following the proposal made by France and Germany, "The European Minister for Foreign Affairs (now called High Representative) will rely on the European diplomatic service which unites the Commission's Directorate-General for External Relations with a foreign affairs unit..." This will lead to the emergence of a European diplomacy in charge of implementing the Union's common foreign and security policy.⁵

The main point of contention which is disabling the Union is the separation, or even chasm, between community affairs and security, defence and foreign affairs. In these noble areas, the Commission can only intervene to a limited extent or through the High Representative who, moreover, has the right to table proposals on behalf of the Commission. It is true that more responsibility would be involved with regard the European Parliament. And yet a consensus is still necessary when dealing with such sensitive issues. The President of the European Council and the High Representative who co-chair the Council for Foreign Affairs are in charge of facilitating this consensus. In this sense, they will help to limit deliberations to the institutional framework and avoid by-passes by using other options such as the letter of the Eight.

If you accept that the only instance that can elaborate a strategy and truly implement a common foreign policy is the European Council, along with the President of the Commission and the High Representative, you should also accept that the Commission helps to limit the dominating role of the leading countries – a position that has been exacerbated by the

⁵ Although the constitutional process has been stopped, proposals are being studied for the creation of a European diplomatic service and the institution of an instrument for preventing natural or man-made disasters.

increasing number of extra-community measures. The community forum enables small and medium Member States to make their opinions heard and influence decision-making. In this context, they will be able to unite their efforts to enhance the role of the Commission during preparation and follow-up. Our long experience shows that the Commission is the best guarantor of common interests and democratic equity within the Union. The last traces of unanimity and the threat it represents for the functioning of the Union could be taken care of with a flexibility clause that would allow for necessary readjustments in the future.

In any case, we have noticed that the division is not as some may imagine between the large States on the one hand and the other Member States on the other. In fact, coalitions are created and dismembered on a case-by-case basis and depend on the specific interests and relations at any given time. The crisis in Iraq led to divisions amongst the large States as well as the medium and small Member States. Finally, because the Commission is the only institution that is accountable to the European Parliament, its role in decision-making is an essential component of the Union's democratic system. This gives us an idea of just how crucial its composition and power will be for the functioning of the enlarged Union.

However, there is some ambiguity as to the double loyalty of the High Representative who, while remaining the Vice-President of the Commission, has reduced responsibility to the College. It is true that he must resign his position as member of the College of Commissioners but he still has the same functions. This should no longer be the case if we adopt the community method in this area as well: the logical consequence would be the collective or individual responsibility of all the Commission members. If you apply the logic of the community method, the decision-making procedure of the European Council should evolve towards an increasingly frequent use of the qualified majority system and the application of constructive abstention provided for in the Amsterdam Treaty. Likewise, the proposal once made by the Spinelli and Tindemans projects to create a distinction between overall issues that affect all the Member States and issues of a more limited scope could prove to be useful in the future. Moreover, the European Council, following a proposal made by the Commission, should have the ability to grant powers to a State or group of Member States and to the High Representatives for various missions such as the discussions with Iran or relations between Israel and Palestine. The European Union needs to increase its decision-making and executive powers which should enable it to become a major player and

international hub in a multipolar world alongside the United States and emerging powers such as China, India, Japan and Brazil.

In the spirit of *flexibility* and *differentiation*, many significant steps have been taken including the *euro* and *Schengen*. In this same spirit, reinforced cooperation follows the principle which enables a group of member countries to decide to move forward like a sort of front line or pioneering core with the approval of the other members and provided the path is clear. This dynamic core would play the role of a pioneer seeking to draw in those who did not have the will or the means to become involved from the start. It is a promising prospect for the future.

Towards a bicameral legislative system. The Council: confusion or separation of powers?

The Council along with the Commission plays a key role in the decision-making process of the European Community. It is in fact the final stage in the legislative process of the European Community for it acts on proposals made by the Commission and increasingly in cooperation with the European Parliament. Its role in adopting the common policies put forward by the Commission as well as its governmental powers – which it often shares with the Commission – reinforce its position within the community system. Just like Janus, it has two faces: legislative power and governmental power. By extending the noble fields of the European Union, the Council – alongside the European Council – has become the main beneficiary of the new powers attributed to the Union for the CFSP. This means that it is at the heart of the debate on the intergovernmental or federal nature of the European Union. It has always been ambiguous and this has much to do with the fact that it is not subject to the control of the European Parliament as a community legislator, which is logical, but also when it makes governmental decisions, which is not quite so logical. The lack of separation of its powers leads to a paradoxical situation in which the Commission – which makes proposals – is submitted to the democratic control of the European Parliament whereas the Council – which makes the decisions – avoids all forms of parliamentary control when exercising its governmental power. Don't people often say that Montesquieu hasn't made it to Brussels yet?

In the legislative process of the European Community, the Commission drafts proposals while trying to respect both the coherence and the balance of community norms. Gradually, *legislative codecision* has spread and strengthened the powers of the European Parliament and the capacities of the Council thanks to the extension of the qualified majority system. Despite the limited progress made in Nice, the general trend is towards more democracy, more efficiency and more transparency. And towards a *bicameral legislative system*. The double participation of the Member States and the population of the Union shows that the European Community is moving towards a federal system. This explains the proposal in the Convention for the establishment of a Legislative Council. As is often the case, this outline of the separation of the Council's powers took us back to square one when it was being shaped at the Intergovernmental Conference. So the ambivalence of the Council was not only maintained but also increased because now, in addition to its legislative functions, it has more governmental functions since the Union has extended its powers in security, defence and foreign affairs. The confusion of powers seems to be the chronic disease of the Council.

At the same time, the powers of the European Parliament have taken on different forms which resemble those of its national counterparts: democratic control, budgetary power, power of approval and investiture, assent procedure, power to organise investigations and hearings as well as initiatives and promotions. These procedures bring to light the activities of the European Union for the European Parliament is the *only transparent institution* whose community function contributes to opening the Union up to the European people.

A Council of States

The German government has made proposals based on the ideas of Karl Lamers and Wolfgang Schäuble⁶: the Commission would become the European government whereas the Council would be transformed into a House of States alongside the European Parliament. This transformation was also put forward in the European Youth Convention in Brussels on 12 July 2002. This system does have the advantage of being very simple but it would mean breaking away from the institutional experience of the Union to enter a federal vision of double participation – that of Member States and European citizens.

⁶ CDU/CSU-Fraktion des Deutschen Bundestages, Bonn, 1st September 1994.

President Rau believes: “We already have the stones we need to build a European Federation of Nation-States. All we have to do is to shape them, assemble them and structure them”⁷. The Federation of Nation-States was a concept first expressed by Jacques Delors. To my mind the title of Federation of European States and Peoples seems to better fit the reality of Europe where some States are not Nations, like Belgium, and where some Nations are not States. This structure finds its legitimacy in the double representation of the citizens within the European Parliament and a House of States. According to Joschka Fischer, “we will have to choose between a Senate model where the Senators from the Members States would be elected by direct suffrage, and a House of States much like our Bundesrat”⁸. Unlike the American Senate or the Cantons at the Council of States in Switzerland, where the Member States are equally represented, the distribution of seats at the Bundesrat takes into account the variable dimensions of the Länder (4 Länder have 6 seats each, one has 5 seats, 7 Länder have 4 seats and 4 Länder have 3, the total being 69 seats). This example is often given when referring to the weighting of votes in the Council of the European Union and would be used as a model for distributing seats within the Council of States.

The driving force of the Union: the European Commission

The Commission, an original and autonomous institution, has the right of initiative and proposal as well as powers of supervision and administration. It is the only institution with active powers that is responsible for voicing the general interest of the Europeans based on an overarching objective vision and for promoting political standards and lines of action in a community perspective. Yet in the EC Treaty the Commission, which plays a pivotal role in the first pillar of the Community, is given a limited role in the CFSP and in the Rapid Reaction Force subsystem as well as, to a lesser extent, in internal affairs and justice. The juxtaposition of various subsystems leads to malfunctioning, imbalance and waste.

As the driving force for integration, the European Commission is meant to take charge of governance within the Union. It is clearly the only institution made up of full-time

⁷ “Une Constitution fédérale pour l’Europe”, *Le Monde*, Paris, 4 November 1999.

⁸ “L’Europe Unie selon Joschka Fischer”, *Le Monde*, Paris, 14-15 May 2000, the official title of the speech is : From the Confederation to the Federation, thoughts on the purpose of European integration. The past experience of the European Parliament has led to the elimination of its double mandate.

members who have enough autonomy to counterbalance the national interests represented by the Councils. It is the main guarantor of global cohesion within the Union. To maintain this role after enlargement, it must make sure its collegiality and efficiency are reinforced by limiting the number of its members and by making its small administration more effective. Over the long history of the European Community, despite some ups and downs, the Commission has fulfilled its duty as an institution by promoting initiatives and making proposals. On the whole, it has had more of a political than simply a legal or administrative mandate. By doing this, the Commission has taken on the role of a pendulum which ensures balance and understands the modalities of shared sovereignty while avoiding permanent coalitions.

By basing its work on consultations with experts and the main players and stakeholders, the Commission seeks to find balanced solutions which are as objective as possible and reflect the interests of the medium and small Member States while taking into account those of the larger States. This explains why they feel so strongly about preserving the independent role of the Commission. The Commission has very often been defended by the small and medium Member States including during Intergovernmental Conferences. From what they have said, these States find it more difficult to assert their views in intergovernmental structures which are mainly dominated by the larger Member States. However, in a community or federal system, the Commission would continue to promote common European interests through its proposals and its role in the negotiation process while maintaining a balance between all the Members. That is why it is so important to reinforce the authority of the Commission as well as its political weight in the enlarged Union. It is in this spirit that the simplified Treaty has kept the series of articles that reinforce the authority of the President of the Commission and his collegiality.

The key role of the Commission can be seen in the link between its authority and the qualified majority system. By favouring the general interests of the Europeans and by finding a balance between the interests of the countries and sectors of activity in its proposals, the Commission promotes the extension of the qualified majority rule. Yet to exercise its responsibilities efficiently and meet the expectations of the States, regions and populations, the Commission must secure a more direct legitimacy and develop its governance capacities. This increased democratic legitimacy could be obtained by involving the European

Parliament and European political groups in choosing the President of the Commission and nominating the College.

The Commission should devote its time mainly to political leadership which requires reflection, a capacity for analysis and a spirit of innovation and impulse. The ability to promote, stimulate and guide according to medium and long-term objectives which have been carefully thought through, then, if necessary, the ability to supervise and coordinate is what the Commission needs for European-scale governance as is the case on a national, regional or local level. Quick diverse communications require a great capacity for analysis, vision and strategy. This is the price to pay if you want to focus on the essential role of governance. This overhaul, which must be accompanied by the reform of the Commission, is even more important in that the College will have to increase its role in the common foreign and security policy. To play its role as an active community institution, the Commission will have to focus less on administration and more on governance and the interests of the European citizens.

The modifying Treaty seeks to consolidate and extend the role of the President whose twofold legitimacy comes from his appointment by the European Council by qualified majority and his election by the European Parliament. By applying this same logic, the European Council takes into consideration the results of the European Parliament elections then organises “appropriate consultations” before appointing its candidate before the European Parliament. The Parliament then elects the President of the Commission by a majority of its members. On this point, Jacques Delors proposes that each of the two major political groups or a coalition of other political groups choose a candidate. This proposal will make the link between the citizens’ vote and the election of the President of the Commission more tangible and will therefore encourage participation in the European elections. The only thing we would need is to make sure that the voters are aware that they have more power over the choice of the President of the Commission.

The appointment of the members of Barroso’s Commission brought to light the fact that the Commissioner from a given country is not only put forward but in fact is also imposed on the President appointed by the national government. Wouldn’t it be wiser to allow the elected President to choose the members of the Commission by consulting the governments or reaching an agreement with them? This is the idea put forward by President Sarkozy. After having thus been composed as the result of teamwork, the European

Parliament would give its approval after hearings by a Parliamentary Committee as was the case for the Barroso Commission. Through this innovation, the President's leadership would be enhanced from the start and would therefore reinforce the cohesion of the College. The President decides on the internal organisation of the Commission to ensure the coherence, efficiency and collegiality of its work. He also has the power to appoint Vice-Presidents except for the High Representative of the Union who is appointed by qualified majority of the European Council with the approval of the President of the Commission. Moreover, the President has the right to ask for the resignation of a member of the Commission. More importantly, the President defines the orientations and the framework in which the Commission will carry out its mandate.

The make-up of the Commission as planned in the constitutional Treaty and maintained word for word in the modifying Treaty raises serious issues. The "egalitarian rotation" of members is far from satisfactory. The system enshrined in the European Constitution creates a core of 15 decision-makers and 12 other members who do not have the right to vote. This rotation guarantees the successive and egalitarian participation of all members. The question is whether egalitarian distribution of Commissioners will weaken the Commission and therefore the community method. In this system the members from Malta will play a decision-making role as often as those from Germany despite the great disparity between their human resources. What is more, the egalitarian rotation system actively applies the implication that Commissioners are "representatives" of their countries. Yet this image relayed in the media is contradictory to the independence of the Commission whose members do not receive instructions from the outside. These observations may lead us to consider the possibility of letting the elected President choose the members of his team. His choice could be based on a list of two or three candidates per country. Another innovation deserves to be pointed out: the reduction to two thirds of the members planned in the Treaty can be modified by a unanimous vote by the European Council. So the possibility of a mini-reform that could then become a precedent has been planned.

President Prodi's solution was to keep the system with one member per country⁹ but to compensate for the complexity of a twenty-five member Commission by setting up a sort of ministerial cabinet made up of seven members, each of which would chair a group covering a

⁹ The former President of the Commission, Jacques Delors, also opted for a Commission with 25 members.

series of sectors¹⁰. Even though this system may curb the concept of equality, it would give the President a say in the choice of the seven Vice-Presidents who chair the sub-groups and would enable him to distribute the work based on their skills. Thus, while including a Commissioner from each country and therefore keeping in close contact with all the Member States, the Commission should be able to work efficiently, reinforce its political authority and take on the role of a European government. Several other solutions have been examined: the rotation system used for the Advocates General at the Court of Justice or Commissioners and Deputy Commissioners from certain countries and groups of countries.

The future role of a unifying core

After having analysed around thirty cases of integration and disintegration, Karl W. Deutsch came to the conclusion that each time a process for uniting States led to a lasting Union, like in the case of the United States of America or Switzerland, the Union was built around a dynamic federal core (Deutsch *et al.* 1957). The need to reinforce the dynamic core of the European Union was clearly stated in the “Reflections on European Policy” drafted by the CDU/CSU parliamentary group in 1994¹¹. Faced with the risk of an eroded cohesion within the European Union caused by increasing diversity and even divergences since enlargement as well as a rise in nationalism and a re-emergence of regional identities, the authors of this paper give priority to “the institutional development of the Union, the implementation of the subsidiarity principle (without removing the transfer of competences to the infra-national levels) and the establishment of a European government; the strengthening of the Union’s “solid core” (I prefer less restrictive terms such as dynamic core or unifying core) and the enhancement of quality relations between France and Germany; the reinforcement of the Union’s capacities abroad in terms of foreign and security policy; the enlargement of the Union to Central and Eastern Europe.” The authors of this paper believe that strengthening is a precondition for enlargement especially since without internal consolidation the Union will not be able to face the immense workload that awaits it. They stress that there is a risk of instability that could transform or even dissolve the Union into a

¹⁰ The number 7 corresponds to the number of members in the Swiss Federal Council. Because of the heavy workload, it has been proposed to increase this number and to extend the secretariat by working with the Secretaries of State amongst others.

¹¹ CDU/CSU – Fraktion des Deutschen Bundestages, Bonn, 1st September 1994. The authors of this proposal are Karl Larners and Wolfgang Schäuble.

loosely woven group of States or an “improved” free trade area. By basing this work on the building of a Federal State and the principle of subsidiarity applied to different levels of government authority and between public and private players, the objective would be to increase the Union’s capacity for action and to adapt its foundations as well as its democratic and federal processes. From that moment on, the use of differentiation and a unifying core would become increasingly important in a Union of 27 Members in which diversity is stronger than unity. The flexibility clause was taken up in the reform Treaty but its scope was reduced in that it cannot be used to achieve an objective in the CFSP.

Temporary conclusions

For now, one can only draw temporary conclusions until the text has been finalised, theoretically before the end of 2007. Amongst the most striking examples there have been some steps forward and some steps back. One of these, the definition of the Union’s acts has brought us back to square one: “law” and “framework law” are being replaced by the traditional definitions of regulations, directives and decisions. However, the distinction between acts of legislation, delegation and execution has been preserved. A great number of provisions will simply be reused, the distribution of competences between the Union and the Member States; others, such as the article on energy, will be completed with a reference to the spirit of solidarity and a new point on the interconnection of energy networks. Likewise, the article on the environment mainly covers the need to combat climate change through measures taken on an international scale. By adding this, the Union has shown its desire to play a pioneering role.

In the judicial affairs sector, a new mechanism will enable certain States to move ahead on a number of issues while allowing others not to take part. As long as the mini-treaty includes the main progress made in the Constitution and respects the general structure, the promises made to the Europeans will be kept. However, the cumbersome reform and ratification procedures of the Union expose it to the risk of vetoes and it may grind to a halt. For the moment, all we can do is hope that this reforming Treaty made up of two unique Treaties will be able to contribute to the development of the European Union as from 2009. In fact, give or take a few exceptions, the new Treaty is the first step towards creating a European Federation. Its objective is to implement innovative federalism even though this

may not be consciously or overtly stated. Only the actual application of the new reform Treaty will allow us to assess its efficiency and its true contributions to the federal future of the European Union.

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