

The missions of the European Union

Remarks by Senator Lamberto Dini

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It is right to define the shared objectives before determining how they can be achieved. The prerequisite for every reflection is the definition of the logic on which “Community federalism” must be based, of the fundamental criterion which must govern the allocation of tasks between the Union and the Member States.

The starting point necessarily has to be the “minimal state”, which The European Union already possesses among its fundamental principles, summarized in the concept of subsidiarity. Subsidiarity is the basic means of reconciling uniformity and diversity. It was John F. Kennedy who once said that Europe would be “strong because of its unity and free because of its diversity”. Within the Union there are forces tending to produce uniformity and others tending to produce diversity. On the one hand, the protection of fundamental rights imposes a single set of rules throughout the Community, on the other, competition, not only between firms but also between states and regions, suggests that uniformity is undesirable in some fields, such as taxation.

Deciding what is to be done in common and what falls within the sphere of the Member States is prevalently a political matter; by contrast, verifying the conformity of a measure or an action with respect to that judgement is a legal matter. What is best dealt with by the Union may also change over time. In this respect, it is sufficient to consider the environment, the prerogative of the Member States in the 1950s, or immigration, which only found a place in the Treaty of Maastricht, and even then a marginal one. The

desirable relationship between uniformity and diversity can be effectively expressed in the formula “as much uniformity as necessary; as much diversity as possible”.

Various factors have contributed to an outright revolt, not only by Member States but also by local authorities, against the excessive interference of the Union. Consequently, the allocation of competences has become the key aspect of the reform. It is from these objections, raised in particular by the German Länder, that it is necessary to start out in order to arrive at a politically consistent and socially transparent order. The objections can be summarized as follows:

- a) The core competences of the Union are summarized in Article 3 of the EC Treaty. In referring to the various sectors (from transport to the environment), the text indicates different levels of intensity for common action, using terms such as “common policies”, “policies”, “measures”, “encouragement”, “promotion” and “contributions”.

This list should be replaced with a more rational formulation that would instead distinguish, along the lines of the note distributed by the Convention Presidency, between a very small number of competences allocated exclusively to the Union (e.g. the common commercial policy), competing competences in the majority of fields, where the action of the Union and that of the Member States would converge on an equal footing, and complementary competences, in which the Union would play a marginal role (e.g. culture and social security).

- b) Article 308 of the EC Treaty allows the Union to invoke specific competences if this is necessary to achieve its objectives and the

Treaties do not provide the necessary powers. This article has been much criticized, especially by the German Länder, but it has nonetheless permitted important progress to be made. An alternative formula is conceivable, whereby national governments would be able, possibly on the basis of unanimous decisions, to add or remove Union competences, after receiving the assent of the European Parliament and with the approval of the national parliaments.

- c) The problem of the allocation of competences has its roots in a twofold shortcoming that must be made good:
- on the one hand, the inefficiency of Community action in fields in which that of the individual Member States is nonetheless manifest; foreign policy and defence policy are exemplary in this respect;
 - on the other hand, an excess of regulation and undue interference in sectors in which the Member States would be better placed to act.

The response to the first deficiency must be to bring the management of common matters closer to the federal model, as the representative of the Italian Government, the Honourable Gianfranco Fini, has already pointed out. This implies majority decision-making in the Council, and a role for the European Parliament and Court of Justice, together, for the sake of consistency, with the abolishment of the present pillar structure.

The second deficiency must be tackled by restoring transparency, rationality and responsibility to Community law-making. To achieve this, the Convention must transfer all the provisions of a constitutional nature into a new document, regardless of whether it is given the name of Constitution. It must identify and separate out all the aspects of an

administrative and legislative nature currently contained in hundreds, probably thousands, of articles in treaties and protocols.

- d) Once the three-part division of competences and the different quality of Union intervention it implies have been clearly established, a mechanism introduced to ensure flexibility in the transfer of competences from one category to another, and a classification of rules (as constitutional provisions, laws and regulations) adopted matching the different forms of intervention, there is the problem of the institution that should verify compliance with the rules and principles, correct abuses of power and shortcomings. Checks already exist. It will be necessary to avoid paralyzing procedures, to involve the Member States and to ensure uniform interpretations, which is why the Court of Justice must always have the last word.

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(This is an abridged version of a fuller contribution on the subject that will be made available to the Convention).