

Working Group VII

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Working group VII – "External Action"

Subject: **"Promoting the community method in the External actions of the EU"**
 - Paper by Mr Adrian Severin, alternate member of the Convention

Members of the Working Group VII will find hereafter a paper by Mr Adrian Severin, alternate member of the Convention.

Promoting the community method in the External actions of the EU

Contribution of Mr. Adrian Severin, MP (Romania) to The Working Group “External Action”, The European Convention

1. The Rationale of the EU’s foreign policy

The European Constitution/Constitutional Treaty should provide norms, instruments, and mechanisms which will enable the Union to promote the specific European values in its foreign policies.

The EU was born as a community of fears; fear of war and fear of starvation (poverty). The EU has been able to guarantee peace and stability within its borders. In the globalisation era, when peace, stability, and prosperity have become indivisible, the EU’s challenge is to promote peace and stability out of its borders. Consequently, the EU values and aims are: promoting peace and promoting development. Therefore, the EU foreign policy means instruments for promoting peace through solidarity, and stability through sustainable development.

By its strategic emancipation (achievable only by strengthening political integration), Europe must look for a major role in the decision-making process when the normative framework for two essential global regimes is established:

- i) Global (hard) security regime. *Europe must remain dedicated to the idea of peace that inspired the first cooperative and integrative exercise proposed by the founding fathers of today’s European Union. Europe has to be a systemic and a structured peace provider. To this end it should place itself into a position allowing it to decisively influence the adoption of the global code of conduct in the field of global defense and security.*
- ii) Global socio-economic regime. *The present global dominant economic pattern characterized by the preeminence of the market’s mechanisms over the social life must be Europeanized. Only a strong political Europe, i.e. a union of states with consistent federal components, could twin the efficiency and the solidarity, the freedom of human contacts and the prospective for a decent future everybody could enjoy in their own country. Likewise, only a strong political Europe – at the same time social and prosperous – could compete successfully with the other poles of the globalized world in terms of labor market flexibility and technological progress. Thus the future united Europe will mitigate the negative social shocks induced by globalization and will play a relevant role in shaping the international economic order.*

At the same time, the EU must look for the expansion of the liberal democracy model all over the world. The EU must define its interests and promote them only in accordance with its fundamental values. This means that the “Real politik” alone, that is to say a pragmatism reduced to selfishness and sometimes to cynical approach, is not an option.

The world stability depends to great extent on the success of geopolitical alliances within the Euro-Atlantic and Euro-Asia areas. In this respect, the partnership between the USA and the EU (the EU

as a federation; the US+ the EU as a confederative body) must remain central. Such a successful partnership requires:

- The strategic emancipation of a more political integrated Europe (a federal Europe)
- A fair burden sharing of the international, regional and global responsibilities and initiative rights between the EU and the USA
- The avoidance of the unilateralist temptations coupled with an inclusive approach of the various cultures, goals and expectations.
- The achievement of a stable and dynamic equilibrium between the global equality of opportunities and the equal opportunity of global inclusiveness, within a system of global subsidiarity.

2. The current situation in CFSP

The mismatch between the economic resources of the EU and its diplomatic and political clout is striking and acknowledged by the both European citizens and elites.

The European foreign policy action is determined by “the lowest common denominator” which values internal consensus above external effectiveness. However, more than 70 per cent of EU citizens want the EU to play a bigger role in world affairs.

There are also increasing external factors demanding the EU to be more involved in the international arena and to take on more responsibilities.

Therefore, there are both internal and external demands calling for the EU to become more active in the international political and economic relations.

Despite some certain progress in the field of foreign and security policy in the last years, the European engagement is still unconvincing.

The role of the Union in the world matches its economic importance only in trade and development policy. In foreign policy, it remains weak and confused with too many voices claiming the right to initiate policies.

Moreover, one could notice, in the last years, an expansion of the intergovernmental method in the external policy. Europe’s common foreign policy cannot be any longer just an extrapolation of the national policies of the larger member states. Nor can it be a mere verbal formulation of goodwill.

At present the power is concentrated in the hands of the Council, which does not have to act on a proposal from Commission, although the Commission has the power to make proposals.

Moreover, the way in which the CFSP currently operates is a bad example of how the principle of subsidiarity is interpreted.

The institutional architecture and the procedural mechanisms, no matter how efficient would they be, cannot be a substitute for the lack of real political will of the Member States. Political will remains crucial for advancing a genuine European common foreign policy. However, efficient structures, access to suitable resources, and institutional clarity could represent a catalyst for a more cohesive and efficient European common foreign policy.

I will further present some institutional and procedural solutions that could create an impetus for the common foreign policy.

3. The communitarisation of the CFSP - the best way to stimulate common policy

Most of the members of the Convention agree that the improvement of the external action requires:

- Higher political coherence.
- Rapid and efficient reaction, in real time, which presupposes a single external representation
- Synergy among all actors involved
- Legitimacy of the decision-making process and the confidence of the citizens in the process
- Clear legal frame
- Continuity in goals and policies

All these requirements could be met, as the history of the EU shows, only by using the community method, which allows Member States to share sovereignty in a democratic way. Therefore, steps towards integrating the CFSP into the institutional framework of the Community are required.

The following institutional arrangements would help to achieve what was mentioned above:

- The functions of the HR for CFSP and the Commissioner in charge of external relations ought to be combined in one person.
- This person should be the Vice-president of the Commission, in charged with the external representation of the EU within the strategic frame proposed by the European Commission and approved by the European Parliament and the Council.
- The Vice-president should enjoy the right of initiative in respect of the CFSP.
- The Vice-president should have a leading role in crisis management policies.

Introducing the community method in the external action of the EU can be also a starting point towards an arrangement with more federal elements according to which the Commission is to become the EU's Executive (the Vice-president of the Commission will become the foreign minister of the Union), and the Council is to be transformed into the European Senate with a certain role in guaranteeing the interests of the states.

The competence in the field of the CFSP will be a shared one. Accordingly, the principle of subsidiarity will be applied as far as the CFSP is concerned in such a way as to assure that the decisions are taken at the most appropriate level (national or European), from the point of view of political efficiency.

The Member States will develop their direct foreign relations with the non-EU states in such a way as to avoid any contradictions with the common European policies.

Since the international life is ever more sophisticated and based on the complex interconnections, the solutions to the various problems could be better identified at the regional or global level rather than at the inter nation-states level. From this point of view, the subsidiarity in respect of the

European CFSP should be enhanced in such a way as to allocate more competences to the European level.

The major dossiers of the international affairs – hard security regime, the international order of socio-economic relations, energy security, nuclear safety, fighting terrorism, promoting fundamental rights and freedoms, solidarity with suffering peoples and mainly international policy for the overcoming of the agro-food problem affecting the less-developed countries, the fight against HIV disease and other lethal ones, the prevention and the management of the international financial crises – could be approached in a more efficient and rational way at the European level than at the national level.

The relations between the EU and its immediate and near neighborhood must form the object of a special strategy to be dealt with at the Union's level. By their proximity, the neighboring countries have a special economic and political impact over the internal development in the Union. Coping with this impact would involve a clear initiative right in favor of the European Commission.

Since at present, the Member States are reluctant to give up their powers in a field which is sensitive for their national interests, I suggest that the decision-making system related to CFSP should consist of two main procedures:

1. On the highly strategic issues the decisions should be taken by the Council with unanimity (or super-QMV)
2. For the rest of the strategic issues, the Council will decide by QMV.

In both cases, the Council will decide following an initiative introduced by the Commission or on its own initiative.

The distinction between the two categories of strategic issues will be made by the Council based on a unanimous vote. This decision will be revised on yearly basis.

Upon the initiative of the Commission, the Council must adopt a decision within a reasonable lapse of time.

The policies for the implementation of the strategic goals will be established by the Commission (joint actions/common positions).

These policies will not require the approval of the Council. They will be subject of a parliamentary control, exercised by the European Parliament and the "Legislative Council". Within such a control procedure, the Council will take decisions by QMV. The Council will be the one to have the right to call back decisions.

The EU must have a common diplomatic position, at least, in the following issues:

- Near neighborhood: Balkans, North Africa, European ex-Soviet countries (Moldova, Belarus, Ukraine), Middle East, Caucasus.
- The EU-USA relations
- The EU-Russia relations
- The EU-Asia relations
- The EU-South America relations

- Humanitarian and development aid
- International negotiations in the following matters (a single representation should be considered too):
 - Environment
 - Finance, with a focus on the prevention and the management of the financial crises
 - Commerce
- Nuclear safety, notably in the ex-Soviet Union
- Energy security, mainly the oil strategic stake

One also needs to reform the procedure for mixed agreements. In this respect, the role of the European Parliament should be decisive.

4. Adequate allocation and rational use of the resources for external relations

- a. It is necessary to increase financial resources for the CFSP to support and underpin EU diplomacy decisions.
- b. The Commissioner for external relations should act as the HR for CFSP and as a corollary:
 - i. The CFSP staff will be transferred to the Commission.
 - ii. Budget management will be brought under the Commission services to avoid creating new structures.
- c. The EU should establish a Diplomatic European Academy that would help to create an elite of international civil servants in the field of the Union's external relations. A EU diplomatic corps should be created within the structure of the European Commission under the responsibility of the Commission Vice-president.
- d. The EU should develop an efficient system of information sharing.
- e. In order to achieve coherence between theirs and the Union's external actions, the coordination of the Member States policies should be strengthened and carried out by the EU institutions concerned.

5. The external representation of the EU

- a. The EU should establish common external representation. (Merging of the Commission delegations and Council liaison offices in New York and Geneva is to be taken in consideration).
- b. The Commission Delegations should become fully-fledged EU Embassies, in charge of implementing EU policies; the Embassies of Member States in the countries of accreditation will have the possibility to focus on their state-to-state relations. At the beginning the EU diplomatic representations should set up in non-member countries where a fewer than a certain number (to be decided by the Convention) Member States have diplomatic missions, with a view to the gradual setting-up of full-scale EU-diplomacy.
- c. The Member States will adopt a common position in the relations with other international organizations (IMF, World Bank, OECD, etc) to be expressed through the single voice of the EU.
- d. A system of political dialogue with third countries and regions should be put in force.
- e. A system of joint political reports to be drafted by the Members States' overseas diplomatic missions should be developed.

6. ESDP

- The EU should develop a common policy in the arms industry.
- The instruments of enhanced co-operation would be extending to military and security policy matters. Therefore, a new treaty might strengthen the existing provisions for enhanced co-operation in order to avoid a small group of big countries to have a decisive role in the field of ESDP.
- The common training in military field should be improved (the setting up of a European Military Academy).

7. Treaty revisions

- The revised Treaty should stipulate that the EU foreign policy strategies could be decided by unanimity/super-QMV or by QMV, depending on the category of the strategic issue, following initiatives introduced by the Commission, or own Council's initiatives. The policies for implementation of the strategic issues decided by the Council will be established by the Commission (joint actions/common positions) and will not require the approval of the Council (If the implementation measures require military action, with the Member States' contribution, the Commission initiative is subject of a prior approval of the Council by QMV). The Council will have the right to call back decisions, by QMV, in any stage of their implementation.
- There are too many foreign policy provisions in the treaties (19 articles in the EUT and 13 articles in the ECT). As part of the consolidation of the treaties into a single constitutional treaty, these provisions need to be revised or unified according to the case.
- Within a democratic system the parliament should play its fully-fledged role. Like any national parliament, the EP should become more involved in CFSP decision-making and in monitoring its implementation. The EP should receive the right to co-legislate, to be consulted and to ratify in the field of the CFSP. The EP Foreign and Security Policy Committee should be given a status similar with the Foreign Relations Committee of the US Senate. If the Council is to be split into the legal and executive parts, the former could become a de facto second chamber of the EP. These special functions in the field of the CFSP will be given then to that "Legislative Council", accordingly.
- If the Convention and then the IGC uphold the proposal of the WG on legal personality, the Union will be conferred legal personality and will thus become a subject of international law. The UE will then have full rights to negotiate and conclude agreements. However, the Treaty should contain a single provision, whatever area is concerned, that identifies the Council as the body to authorize the opening of the negotiations and to issue negotiating directives, following initiatives introduced by the Commission, or own Council's initiatives. Then the Commission will conduct the negotiations. The international treaties will be signed by the President of the Commission or the President of the Council.
- Treaties concluded by the EU should be ratified, as a rule, only by the EP (and/or the "Legislative Council") simplifying in this way the time-consuming process of national ratifications. The ratification procedure in the "Legislative Council" will require QMV. Once the Union has legal personality and concludes agreements, national ratification procedures are not justified. Therefore, the wording of Article 24 TEU should be revised as the WG III proposed.
- The pillar structure should be abolished and then the procedure for negotiations established in the present first pillar would be extended to the all fields, including common foreign

policy. On this basis the Commission will have the right to initiate (not just recommend) the opening of the negotiations in matters under present Title V.

- With regard to the international representation of the Union in international organizations the Treaty should contain mechanisms to ensure that the Union can express a single position, or even be represented by a single delegation (as the WG III proposed).
- The Treaty protection of national arms industries should be abolished.

8. Monitoring subsidiarity in CFSP

As regard the monitoring of the subsidiarity in common foreign policy I have some observations:

1. If we want to make the principle of subsidiarity more operational, we must make monitoring as legal as possible. If the convergence of political interests were stronger, applying and monitoring of the principle of subsidiarity would be rather an issue of legal nature than of political nature.
2. The European institutions and the Members States/National Parliaments should have the right to appeal at the Court of Justice/the Constitutional Court when they consider the principle of subsidiarity to be breached in respect of the CFSP. We have to encourage the Court of Justice to make judgments on the issue of subsidiarity.
3. Until the convergence of the political interests of the Members States become stronger, an *ex ante* conciliation body and an arbitration body (for those cases when the conciliation fails) should be established. The *ex ante* conciliation body could be the Committee on foreign affairs of the EP.
4. The final remark is that if we could not solve the basic issue – the harmonization of the interests - no matter what mechanism we would invent, we would only pass the hot potatoes from one hand to another. The harmonization of interests requires political will on the part of the Member States.