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COVER NOTE

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Subject : Contribution from Mr Louis Michel, Mr Karel de Gucht and Mr Elio di Rupo, members of the Convention, and Mr Pierre Chevalier, Mr Danny Pieters and Ms Marie Nagy, alternate members of the Convention

The Secretary-General of the Convention has received the attached contribution from Mr Louis Michel, Mr Karel de Gucht and Mr Elio di Rupo, members of the Convention, and Mr Pierre Chevalier, Mr Danny Pieters and Ms Marie Nagy, alternate members of the Convention.

MISSIONS, POWERS AND INSTRUMENTS OF THE UNION
PROPOSAL FOR A GENERAL APPROACH

I. Clarifying the debate

Citizens often have conflicting feelings about the European Union. On the one hand they have expectations which the EU does not always meet. On the other hand, they sometimes have the impression that the EU goes too far in areas where intervention is not always necessary.

The EU's missions cannot be examined in isolation. If the EU is to operate efficiently and meet the expectations of its citizens, then a link must be established between its missions, powers and instruments, with the most appropriate distribution of powers and the most efficient instruments stipulated for each mission and each objective.

The purpose of this document is to set out a general framework for analysis. At a later stage, through a case-by-case examination, it would be advisable to define specific objectives, stipulate the allocation of powers and set out the most efficient instruments for carrying out each of these missions.

II) Shared values, foundation of the Union

First of all, the Constitutional Treaty should set out the principles on which the Union is based and which provide a framework for all of its activities. These principles are set out namely in the Charter of Fundamental Rights which should be incorporated in the Constitutional Treaty.

III) Missions of the European Union

The treaties already set out ambitious missions and objectives for the Union. However, these missions need to be updated in the light of changes within the international context and the Union.

These missions, which must meet the expectations of EU citizens, should be brought together in the Constitutional Treaty, focusing on the following key areas:

- guaranteeing respect for the rule of law, democracy, human rights and fundamental freedoms within the common area, and promoting these principles outside the Union;
- guaranteeing and developing, within a single market and within an economic and monetary union, a model for a European society that seeks to ensure balanced economic growth, social progress, full employment, quality of life, sustainable development, as well as economic and social cohesion and solidarity among the Member States and Regions;
- guaranteeing and developing a common area of freedom, security and justice within which the free movement of individuals is guaranteed;

- reaffirming the Union's identity on the international scene and promoting, in its international relations, security, peace, international cooperation, as well as improving fairness in trade and finance.

IV. Organisation of powers

1. Clarification of powers

A Constitutional Treaty should define the different categories of the Union's powers and their impact on the powers of the Member States. It should distribute powers as transparently as possible between the European Union and its Member States. The citizens must be able to see 'Who does what' and 'Who is responsible for what' as clearly as possible.

2. Basic principle

The basic principle is that the EU only has those powers conferred upon it by the Constitutional Treaty.

3. Criteria for conferring powers upon the Union

The following criteria justify the conferring of powers upon the Union:

- Preventing adverse effects that could generate an action conducted by the individual Member States whereas the area concerned by the planned activity stretches beyond national boundaries.
- The Union's activities offer a comparative benefit in terms of efficiency and economy of resources needed.
- The Union's activities, responding to the need for cohesion and solidarity, cannot be ensured in isolation and in a satisfactory way by each Member State because of the different situation of each State.

4. Definition and distribution of powers between the Union and the Member States

The Union's powers, which are functional in nature, are simply means whereby it carries out its missions and achieves its objectives, as defined in the Treaty for each individual domain. Consequently, powers will be defined on the basis of missions and objectives.

It should also be stressed that there cannot be a rigid relationship between powers and instruments. Certain policies call for the use of multiple instruments to achieve the objectives sought. The most appropriate instruments must be decided case by case, domain by domain.

Generally speaking and without wishing to define the exact extent of these powers at this stage - as that will depend on the objectives of each policy - the distribution of powers could be sketched out as follows:

a) *Exclusive powers of the Union*

- *The exclusive powers of the Union are those powers which, by their very nature, are reserved for the Union. Only the institutions of the Union are empowered to act. The Member States can only intervene in the name of the Union by virtue of a legal act of the Union.*

In some cases, the very nature of the objective is such that a concurrent action, even a partial one, by the Member States makes it impossible to achieve the goal pursued.

Exclusive powers should include*:

- the rights and obligations resulting from citizenship of the Union;
- access to the territory of the Union by goods (customs union) and persons (immigration and asylum) from third countries;
- all foreign trade relations;
- monetary policy for countries in the euro zone, including foreign policy considerations;
- the budget (revenue and expenditure) of the Union;
- the external representation of the Union.

b) *Powers exercised by the Union and by the Member States*

In many areas, the nature of the objective does not justify the power being reserved immediately for the European Union; the exercising of a power by the Union can, however, prove necessary to achieve shared objectives more quickly, more efficiently and more broadly.

* Specific matters such as the conservation of the biological resources of the sea also fall under this category.

The exercise of such a power by the Union must be subject to the principles of subsidiarity and proportionality. Before taking action the Union must verify that what it does will add value in terms of achieving the objective. The Union must also ensure that its action does not go beyond what is necessary to achieve the objectives in question.

The powers held by both the Union and the Member States include:

i) joint powers

- *The Union's joint powers are powers conferred upon the Union which the Member States may exercise as long as and provide that the Union has not done so. In this case, however, the Union acts in accordance with the principle of subsidiarity, i.e. if and in so far as the objectives of the planned action cannot be achieved adequately by the Member States and can therefore be better achieved at Community level due to the size or impact of the planned action.*

In many areas where powers are not conferred exclusively upon the Union, the Member States retain their right to exercise their power as long as and in so far as the Union does not exercise its power. Of course, in exercising their power, the Member States are bound to cooperate in good faith with the Union and to refrain from taking steps likely to jeopardise the achievement of the objectives pursued by the Union. On the other hand, it goes without saying that when the Union exercises a power in this area, the Member States can no longer intervene in that area without prejudicing the achievement of the objective sought; the Union exercising its own power may lead to exclusive power for the Union when it has exhausted its entire range of action.

In other areas, the exercising of powers by the Union only partially replaces the exercise of powers by the Member States: for instance, when the Union only sets minimum requirements, the Member States can continue exercising their powers to go beyond these requirements.

In other areas, conferring a power upon the Union does not mean that it replaces a power conferred upon the Member States in pursuit of a common objective, but it does put a framework and more or less strictly coordinate the action taken by the Member States in exercising their own power.

Consequently, there is a gradation in the intensity of the power of the Union when compared to the power of the Member States. The gradation varies depending on the area for which a joint power is conferred upon the Union. It depends on the specific political objectives behind the conferring of power. It is therefore advisable to specify - for each domain and sometimes for each sub-domain- the scope and intensity required of EU action in respect of the objective pursued.

The following fall under this category of powers to one degree or another: the establishment and functioning of the internal market (free movement of persons, goods, services and capital, competition policy), the common agricultural policy, the common fisheries policy, economic policy, social policy, employment policy, public health, consumer protection, transport policy, trans-European networks, energy policy, environmental policy, policy on economic and social cohesion, police and criminal judicial cooperation, civil judicial cooperation, foreign and security policy, defence policy, development cooperation policy and the association of OCTs (overseas countries and territories).

ii) complementary powers

- *The complementary powers of the Union are powers conferred upon the Union to complement or support action taken by the Member States with a view to achieving a common objective in areas where the Member States are still the natural holders of the power.*

In certain areas the Union cannot replace the Member States to achieve a given objective more efficiently. On the other hand, the Union may help achieve said objective through its own efforts to complement or support the action taken by the Member States, if necessary through legislative measures.

The following should fall under complementary powers: industry, research and technological development, education, vocational training, culture and youth.

c) *Powers of the Member States*

Lastly, the Treaty should state that those powers that are not devolved to the European Union shall belong exclusively to the Member States. In this respect, the basic principle whereby the Union only has those powers conferred upon it under the Treaty should suffice.

In addition, provisions such as the current Articles 94, 95 and 308 of the EEC Treaty should offer the margin of flexibility needed to allow the Union to take the necessary measures to carry out the missions entrusted to it, whereas the Treaty has not provided for any specific powers for this purpose. This applies even if these provisions must be accompanied by guarantees to prevent the misinterpretation of the Union's powers.

d) *Regions with legislative power*

The emergence within the EU of regions with legislative powers cannot be ignored for much longer. Regions with legislative power should be able to enjoy certain rights and obligations within the context of the Union. It would be up to the Member States to send the list of regions in question to the EU institutions along with a description of the extent of their powers. The rights of regions with legislative power should include *inter alia* the right to be consulted by the Commission when the Commission plans measures within their area of power, and the possibility of bringing matters directly before the Court when their powers are at stake.

V. Instruments

There is no point renewing the missions of the Union and organising the distribution of powers if the Union does not have correct, effective instruments to do the job. It is advisable to define those instruments that must be implemented in order to exercise the various powers conferred.

It should be emphasised right from the start that recourse to a given type of instrument in

no way depends on the power category. The Union's degree of intervention and choice of instrument depend more on the objective pursued, in accordance with the principle of proportionality.

In addition, the choice can evolve over time so that the Constitutional Treaty makes it possible to use the most appropriate instrument without needing to modify the basic treaty - in line with a change in the degree of intervention needed in a given domain.

(a)Legislative and executive instruments *

A hierarchy of standards applies between legislative measures and regulatory executive measures.

Legislative measures:

- Laws: general, obligatory directly applicable standards that do not require national intervention for them to have an impact;
- Framework laws: general standards which are obligatory in terms of the objective sought but which must be translated by national legislative measures to that end. Using this type of instrument would set out the general direction and objectives (targeted result) while letting the Member States implement them by defining the relevant means.

Laws and framework laws which translate a political decision should, following a proposal by the Commission, be adopted by the Council by a qualified majority and in co-decision with the European Parliament. In an enlarged Union, retaining unanimous voting will only lead to a greater chance of obstruction and, consequently, frustration for the citizens.

- European agreements emerging from the dialogue pursued by the social partners at Community level should be recognised by the EU institutions.
- Non-binding measures: (opinions, recommendations, etc.): these are adopted by either the Council or Commission.

Executive measures

At EU level, implementing regulations following on from the political decisions described in laws and framework laws would be adopted by the Commission within a process of renewed comitology, making it possible to guarantee transparency and political oversight.

(b)Coordination instruments *

The purpose of coordination procedures is to ensure convergence in the performance and/or policies of the Member States with respect to a common objective in certain domains. These procedures must be pursued within the context of EU institutions and should be binding to some degree, depending on the case.

The basic political principles are decided by qualified majority by the Council following a proposal by the Commission and an opinion by the European Parliament. Implementation is monitored by means of a multilateral evaluation procedure, with the Council deciding - where necessary and pursuant to the Commission's opinion – upon the recommendations which are necessary in order to ensure compliance with the established guidelines.

(c) Financial instruments

The European Union should be able to directly finance expenditure linked to its political decisions in connection with the missions entrusted to it. Without wishing to create a heavier tax burden at EU and Member State level, the aim is to modify the method for financing the European Union by establishing a fully fledged system of own resources with no national contributions from the Member States. This would involve only the common institutions.

VI. Conclusion

Only through a joint approach to the mission, the level of power exercised (and, where appropriate, tested against the principle of subsidiarity) and the type of instrument used as a function of the principle of proportionality can everyone form an accurate picture of who does what and therefore ascertain who is responsible for what.

* The decision procedures set out under V a) and b) as well as the role Commission, Council and Parliament play in those, must be seen in a broader statement on the means to reinforce the European institutions system, its democratic legitimacy and its working methods.