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COVER NOTE

from :	Secretariat
to :	Convention
Subject :	Contribution from Mr Peter Glotz, Mr Peter Hein, Ms Danuta Hübner, Mr Ray McSharry, Mr Pierre Moscovici, members of the Convention: Division of competences

The Secretary-General of the Convention has received the contribution annexed hereto from Mr Peter Glotz, Mr Peter Hein, Ms Danuta Hübner, Mr Ray McSharry, Mr Pierre Moscovici, members of the Convention.

**Joint contribution
on the issue of the division of competence**

Acceptance, transparency and efficiency

Europe faces a paradox: its popularity ratings do not match its unprecedented success. There is general unease among Europe's citizens about the process of European integration. People find it difficult to understand who does what within the European Union. And there is a widespread impression that too many detailed rules are decided at European level. At the same time, many European citizens and voices in the Convention call for a larger European role and visibility at the international level.

Therefore, we should ensure a clear and sensible division of labour between the Union and the member states. We should make sure that we act at the right level, and that when the Union should and does act, it adheres to the principles of subsidiarity and proportionality. Establishing a clearer division of responsibilities as well as precise rules for exercising these competences will make Europe more efficient and help make it easier for citizens to understand. That is crucial if the process of European integration is to continue to enjoy the approval and support of Europe's citizens.

A catalogue of competences is not the aim

- As the Convention deliberations have already shown, attempting to make rigid distinctions between the respective competences of the Union and the member states is not the right approach. Flexibility has allowed the Union and its members to respond rapidly and pragmatically to new challenges.
- It makes little sense to lay down precisely in a catalogue what competences are left to the member states. It would be much better to clarify this matter by means of a new principle that explicitly states the current position – that the Union has no competences other than those conferred on it by the Member States through the treaties and that any matter for

which the Union has no competence remains the exclusive preserve of the member states. It is not the Union, after all, that grants competences to the member states.

We need clear and flexible structures as well as innovative procedures

- To create an effective and transparent Union we propose:
 1. Clear categories of competence for the Union
 2. Adoption of a set of principles on how these competences should be exercised
 3. New checks and balances to ensure compliance with agreed rules

1. Clear categories of competence for the Union

- In the Union's legislative practice as it has evolved, three different categories of competence can be identified: exclusive competence, shared competence and complementary competence. In some areas such as external trade, action by the Union has taken the place of action by member states. In many areas, the internal market for example, competences are shared between the Union and the member states. In other areas, such as in higher education and research, action by the Union complements the national policies pursued by member states.
- To describe this system in clear and logical terms would help make Europe more transparent and credible in the eyes of its citizens : the treaty could thus better clarify the different ways of organising action between the European Union and its members states depending on the various policies.

2. Adoption of a set of principles on how these competences should be exercised

- In the various European treaties the member states of the Union have already agreed on core principles on how competences should be exercised. In this respect, too, we should seek to make the existing system clearer and easier to understand, thereby ensuring the principles themselves will gain in force and cogency. Here we are thinking inter alia of
 - the principles of subsidiarity and proportionality
 - respect for the national identities of the member states, including their internal structures
 - an explicit statement of the present situation that any matters where the EU has no competence remain the preserve of member states

3. New checks and balances

- Checks and balances are a fundamental feature of our democracies. . People have a sense that more and more of their daily lives is governed at the European level. They want many important things to remain the preserve of national and regional government. Whilst it is not the task of the Convention to comb through the acquis communautaire in the search for possible abuses, it is our job to make sure that we have system for the future in which we can all have confidence.
- What we are keen to see is a procedural strengthening of control as one aspect of the discussion. The other one is democratic legitimacy. The April meeting of the Convention demonstrated support for better scrutiny of proposals in order to make sure they are both necessary and desirable. And many agreed with us that a political body would be best suited to the task. We believe this task could possibly be carried out by national parliamentarians acting collectively, being those close to the citizens, or by some form of body mandated by the Council.
- Additional democratic control by a new body should not impair the Union's capability to respond to new challenges. It should complement the present role of the ECJ - perhaps by looking at proposals as they are made. We would also have to make sure that it neither hampers the business of the EU nor causes undue expense. It should not render the decision-making process cumbersome but improve overall transparency. Such a body should offer advice to make sure that decisions are taken at the right political level and that the appropriate instruments of method of cooperation are used. It could support transparency by clarifying the areas to be reserved for member state competence, whilst facilitating desirable action at the European level. In short, it could help to make sure that the subsidiarity principles laid down by the treaty are better respected in individual instruments.
- Last but not least, it might be useful to reflect together on Alain Lamassoure's suggestion that the mechanism of Article 308 of the TEC could be used to allow for competences to be restored to member states in cases where action by the Union is not necessary any longer.

The division of labour between the Union and its member states as well as its underlying logic and method are fundamental issues if we want to build a more democratic, transparent and efficient Union. We submit this proposal to the Convention.

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