

THE EUROPEAN CONVENTION

THE SECRETARIAT

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COVER NOTE

from :	Secretariat
to :	Convention
Subject :	Proposals by the CDU and the CSU for a European Constitutional Treaty

The Secretary-General of the Convention has received the attached proposals by the CDU and the CSU from Mr Wuermeling, alternate member of the Convention, which he would bring to the attention of the Convention members.

Proposals for a constitutional treaty with a redistribution of powers between the EU and its Member States

The CDU and CSU welcome the Nice European Council's "Declaration on the future of the Union", which is intended to initiate a wide debate on the EU's future. They are keen to play an active role in this process and would like to contribute some specific proposals, particularly as regards the separation of powers between the European Union and the Member States.

1. The European Union in the face of major new challenges:
 - (a) The unification of Europe is the great European success story of the second half of the 20th century. After two world wars, it has, alongside the Atlantic Alliance, brought peace and stability and improved social welfare to all its member countries. The attraction of the idea of a united Europe was decisive in helping to end the conflict between East and West, and the division of Germany and Europe.
 - (b) In a world where globalisation reigns and new threats to our security exist, Europe will be better able to assert itself as a single entity. European unification is a unique opportunity for the European way of life, along with the values on which it is based, to make itself felt in the world of the future. In this way, Europe can help to make a better world.

- (c) Following the collapse of Communism, an enlargement of the European Union will enable us to bring the artificial division of our continent to a permanent end, and to deal with any of its residual effects. We can make Europe into the most stable, secure, prosperous and socially just region in the world. Economic integration secures jobs and enhances competitiveness.
- (d) The European Union's ability to act must be reinforced both among its Member States and in its dealings with non-member countries. This, together with the enlargement of the European Union, give the integration process a new dimension. In this context, there is a need for increased support from ordinary citizens, whose image of Europe is sometimes one of bureaucracy rather than efficiency, and in some cases they even need to be convinced that this course is the right one. A correct balance must be found whereby Europe is able act while maintaining national and regional identities.
- (e) The continuing process of integration is having a significant effect on the constitutional and political structures within the Member States. Questions concerning the division of powers are bringing countries and regions (and their respective parliaments) face to face with new challenges, and clear answers are needed. The answer to the question of what Europe should be able to decide also provides a convincing argument for European unification.
- (f) The European Union must basically have competence in the areas of foreign, security and defence policy, a functioning and economically competitive single European market, joint representation abroad and a single currency, reform of the Common Agricultural Policy and (where cross-border arrangements are in place) in the fields of justice, internal security, transport, infrastructure, the environment and health protection.

The European Union should also have responsibility for cross-border arrangements safeguarding the basic freedoms enshrined in the Treaties, but without thereby acquiring regulatory powers throughout entire fields of activity.

Conversely, everything relating to established civil and cultural traditions and what is referred to as "civil society" should remain the preserve of the Member States, i.e. matters such as Member States' internal administration (including local autonomy, family affairs and social security), the labour market, immigration, non-profit-making and charitable organisations and activities, education, culture, sport.

2. Aims of the reforms needed

Our objective is a large and strong Europe which safeguards its heritage, meets its responsibilities for the future and finds acceptance among its citizens. If it is to achieve this, the EU must become more democratic, closer to its citizens, and more transparent. It must concentrate on the tasks that can be dealt with only at European level. This means that further areas of responsibility should be transferred to the European Union, but also that some areas currently handled at European level should be transferred back to the Member States. There is considerable room for improvement in the European Union's ability to act and take decisions quickly.

- (a) Political decisions can only gain acceptance if it is clear to ordinary citizens who is responsible for deciding what. A readily understandable separation of powers between the Member States and the European Union is therefore the crucial element in this reform process and the key to its success. In addition, there is a need for the institutions and their procedures to be reorganised.
- (b) Up to now, the process of European unification has often taken place according to the principle of integrating wherever possible. This approach has now reached the limit of what it can achieve. The time has now come in which the relationship between unity and diversity must be based on a distribution of responsibilities. In a Union of 27 or more Member States, which is foreseeable in the long term, economic, social and cultural differences will be much broader than was the case among the original six Member States. In many areas, centralised decision-making will be able to take account of this increasing diversity only to a very limited extent. The Union must therefore concentrate on key tasks at European level and strengthen its ability to act.
- (c) Europe will, even in the future, consist of nation states, and these must retain the right to decide what tasks are to be carried out at European or national level. An attachment to one's own nation, which is rooted in Europe's history, is not something that can simply be dispensed with. Conversely, the nation state needs Europe because no European nation is now able to carry out important tasks by relying solely on its own resources. Nation states and Europe are interdependent: we can't have one without the other. The European Union will not be a state in the traditional sense, but something quite new. Germany's Federal Constitutional Court, for example, has referred to a "federation of states" based on the principle of voluntary membership.
- (d) The Member States have surrendered traditional areas of responsibility to Europe. This shift must not lead to a situation in which important areas of policy no longer have any democratic legitimacy and are not subject to any controls. The make-up and working methods of the institutions must therefore meet these democratic requirements. This will require a restructuring of the institutional framework in such a way that there is a clear allocation of political responsibilities at European level, and that any action taken is effective.

3. Criteria for redefining tasks

- (a) The principle of subsidiarity is the key guiding principle for the allocation of responsibilities. The idea is that the EU should only be given responsibility for tasks which cannot, in view of the coming challenges, be carried out adequately at national level.

Any additional transfer of powers to the Community should remain the exception to the rule, and there must be special reasons to justify it. The benefits which it is hoped action at European level will bring must be weighed against the possible drawbacks for the high degree of diversity which is so valued within Europe. Not every problem in Europe is Europe's affair.

- (b) In all cases, the basic assumption should be that responsibilities lie with the Member States. Any allocation of powers to the EU must be expressly set out in specific and clearly formulated authorisations.

It is the powers of the EU, rather than those of the Member States or regions, which must be specifically laid down. In areas for which the EU is responsible, however, restrictions may be placed on its powers for the benefit of the Member States.

- (c) Alongside the transfer of powers to Community level, intergovernmental cooperation will for the time being remain indispensable in order to ensure joint action in areas in which not all Member States yet feel prepared to surrender their powers. This cooperation will only be possible with the involvement of the EU institutions while making use of, and further developing, arrangements for "closer cooperation" and "opting-out".
- (d) As regards the powers accruing to the EU, the hitherto largely unstructured forms of action provided for in the treaties (regulation/harmonisation, mutual recognition, supplementation, promotion, coordination, enforcement) should be definitively listed and defined in the Treaty.
- (e) At the same time, the means of action should be defined clearly. For example, directives (EU framework law) should be restored to their original function of providing a legal framework. Other legal instruments which should be clearly defined are regulations (EU laws), decisions, opinions and recommendations.
- (f) When individual authorisations are issued, the permissible forms and means of action must be specified. It must be established whether these forms of action and legal instruments may be allocated to different areas of competence (i.e. exclusive, fundamental or supplementary competence).

Exclusive competences should in all events be specified as such in the Treaty. Except as regards exclusive competences of the EU, it should be stated clearly that the Member States may take action as long as the European Union has not already laid down provisions by means of the powers assigned to it.

- (g) It should be made clear that stated objectives in treaties do not automatically give powers to the EU. The EU's powers must be recognisable, foreseeable and limited. Broad objectives in treaties setting out the general direction of moves towards integration do not meet this requirement.
- (h) The same applies to integration clauses under which Community objectives must also be adhered to when implementing other policies (e.g. cohesion, environmental protection, equal opportunities, consumer protection).
- (i) A clear allocation of powers should make it possible to dispense with general clauses such as Article 308 of the EC Treaty. The scope of the internal market clause (Article 95 of the EC Treaty) should be defined more clearly.
- (j) A number of general areas of life which are still the responsibility of the Member States, or are specially provided for in the Treaty, have (in addition) a financial side (e.g. consumer protection, health policy). This encourages trends towards using internal market provisions to regulate these areas too.

It should therefore be made clear in a competition clause that action in an area of EU competence does not give any entitlement to also regulate important aspects of policies which are responsibility of the Member States. In addition, there should also be clarification of the relationships between EU legal provisions, i.e. that provisions applying to specialised areas of activity should take precedence over the internal market clause which has general applicability across sectors.

- (k) Efforts to bring about a clearer division of powers must not be undermined by arrangements not provided for in the Treaty, such as "open coordination", "European Governance" or "soft law". The Treaty should clearly state that European guidelines and targets which must be transposed at national level and are subject to EU monitoring and assessment (including those deriving from international agenda processes) are only possible within the existing framework of EU competences.
- (l) It should be made clear in the Treaty that the principle of loyalty to the Union (Article 10 of the EC Treaty) benefits not only the EU but also the Member States, and that the EU is obliged to take proper care when exercising its powers. In the process, it should also take account of the national and regional identities of its members (cf. Article 6(3) of the EU Treaty and the Preamble to the Charter of Fundamental Rights).
- (m) European solidarity, which is currently reflected above all in the redistribution of finances through the Structural and Cohesion Funds, is an important and necessary element in the process of European unification. The "golden rein policy" used up to now, which sought to tie financial support to wide-ranging requirements, is the wrong approach, however. It creates an excessive bureaucratic burden which an enlarged Union will no longer be able to bear, and interferes with the rights of the Member States and regions in a manner which infringes the principle of subsidiarity and exceeds the limits of the EU's competences under the Treaty.

We therefore propose that the Structural and Cohesion Funds be replaced by a Solidarity Fund, from which payments can be made to the most needy Member States without any conditions being attached. Actions in the more prosperous Member States which were previously financed from the EU's Structural Fund can be financed by these Member States themselves.

- (n) The financing of the EU needs to be reorganised on the basis of contributions derived from the Member States' economic wealth (GDP in terms of purchasing power standards).

4. Division of powers in individual policy areas

In line with the above-mentioned guidelines, the individual policy areas covered by the European treaties were examined. Our proposals are summarised in our paper entitled *Reform der einzelnen Politikbereiche* ("Reform of individual policy areas").

5. Institutional reforms

The powers of the EU should not only be clearly delineated; the exercise of those powers must, in the eyes of ordinary citizens, be transparent, have democratic legitimacy and be verifiable. Furthermore, procedural safeguards are needed to ensure that competences are properly allocated. Alongside this clear division of powers, we propose the following institutional reforms:

- (a) To the extent that powers have been transferred to the Community, the decision-making process at European level must be comprehensible, and it must be clear where the political responsibility for such decisions lies. What is needed is reciprocal controls and a balance of power between the EU's institutions.
- (b) Legislation, including that relating to the budget, should be the joint responsibility of the European Parliament and the Council. In Parliament, each MEP should represent more or less the same number of people. A minimum level of representation for the small Member States must be safeguarded.
- (c) Parliament, the Council and the Commission should have the right to initiate legislation.
- (d) The executive with political responsibility should be the Commission. The President of the Commission should be elected by Parliament with the consent of the Council. The Commission to be formed by him must be approved by Parliament and the Council. The reformed Commission should have a limited number of members so that it can retain its ability to act.
- (e) In the areas where the EU has competence, the Council should pass the decisions for which it is responsible by a simple majority, whereby the votes cast must be weighted.

Decisions on invoking the general clauses (e.g. under Article 308 of the EC Treaty) or the own-resources decision must be passed unanimously by the Council.

- (f) In the field of intergovernmental cooperation, the decisions of the Council (executive council) must in all cases be unanimous. The Commission should function as the Council's secretariat. Parliament and the Commission should have the right to initiate legislation, and Parliament also the right to be informed.
- (g) The Council in its capacity as legislator (legislative council) should meet in public with a non-variable membership.
- (h) As "masters of the Treaties", the Member States should retain sole responsibility for Treaty amendments requiring ratification. Accession treaties should require the consent of the European Parliament.
- (i) In the event of jurisdictional conflicts between the EU and the Member States, a ruling should be given by a "jurisdiction tribunal" at the European Court of Justice, in which provision could also be made for judges from national constitutional courts to sit.
- (j) Coordination between the governments and parliaments of Member States with regard to EU decisions will fall under national law.

6. Constitutional treaty

All basic provisions (including those on the division of powers between the European Union and the Member States, the financial structure, the institutions of the European Union and its procedures) should be collated, together with the Charter of Fundamental Rights, in a constitutional treaty (basic treaty).

The foundations, aims and values underlying the process of European unification should be set out in a preamble.

The Treaties' current provisions which, because of their technical nature, do not form part of the EU's body of substantive constitutional law, should be reallocated to the field of ordinary law (secondary legislation).

Reform of individual policy sectors

On the basis of these aims and criteria, CDU and CSU demand the following reforms of EU powers in the various policy sectors.

EMPLOYMENT POLICY

Although the EU is currently allowed only to take a supportive and complementary role in terms of employment policy, it is laying down increasingly specific targets for the Member States. An enhanced exchange of experience and information between the Member States in terms of employment policy can help to improve the Member States' employment situations and strengthen European economies in the face of global competition. However, the EU should not be laying down aims centrally and thereby blurring the national governments', and the social partners', employment policy responsibilities, and thereby hampering competition as to which is the best policy. Harmonised EU action would block any competitive impetus engendered by the internal market.

Demands

Clarify the Member States' employment policy responsibilities.

Limit the EU's employment policy powers to the following areas:

- better exchange of experience and information, more especially on tried and trusted procedures, the provision of comparative analyses and expert reports, and support for innovative approaches;
- better macro-economic framework conditions (within the framework of what are already EU responsibilities in other areas) by such measures as the employment-friendly design of internal market law, a liberal external trade policy, help to stabilise the euro, and plans for a new European corporate law.

A leaner European guidelines process (Article 128 of the EC Treaty):

Restrict the "European employment strategy" to the basic essentials;

Outlaw detailed guidelines, especially quantified targets;

Longer intervals between the guidelines and the national action plans (currently annual).

No more general targets (Articles 125, 126, Article 2 of the EC Treaty).

INTERNAL MARKET

The European Union's responsibility for the freedom of movement of goods, persons, services and capital is an essential pillar of European integration. An internal market which is open both to the outside and to the inside creates economic growth and jobs, strengthens firms' international competitiveness and cuts consumer prices. In practical terms, though, the very general nature of the internal market provisions (Articles 94 and 95 of the EC Treaty) frequently overlays other areas of policy. The result is that there are EU conditions in areas where they are not essential for the realities of the internal market. The internal market tends to be used as a figleaf for regulations in areas for which the EU is not responsible.

Demands

Replace the general internal market provisions by clearly described individual authorisations related to the four internal market freedoms, wherever necessary. Investigate the following examples:

- legal bases for particular areas of typically cross-border importance (e.g. electronic commerce; civil-law consumer protection; company law, more especially corporate law; Community-wide legal protection, e.g. patents, model designs and flavours, protected varieties, and copyright law);
- create EU responsibility for the approximation of technical norms;
- where necessary, create a legal basis for internal market-specific EU legal institutes, which would leave Member States' law untouched and would create a framework for Community-relevant matters, e.g. the "European patent";
- create EU responsibility for the liberalisation of certain sectors of European-scale public services provision (e.g. telecommunications, energy and postal services). Make it clear that the details of provision of services should be a matter for the Member States. EU targets should apply only where they are a necessary complement to the liberalisation decision and they are the only way of avoiding distortions of competition;
- examine the need for new EU legal bases for the harmonisation of certain aspects of civil law (e.g. commercial law and contract law), with a view to preventing the fragmentation of law caused by one-off EU regulation based hitherto on general internal market provisions, where necessary by allowing individuals and firms to choose which law to apply to EU regulation.

As an alternative to the replacement of general provisions, EU powers in this area should at least be made clearer by making the following Treaty amendments:

- limiting the scope of application of Article 94 and 95 of the EU Treaty to action which is concerned primarily and directly with the realisation or completion of the internal market and which is essential thereto.
- replacing the general provisions by individual authorisations, as described under the alternative proposals for "replacing the internal market provisions".
- Creating a conflict clause, to avoid recourse being had to the general provisions where a replacement proposal impinges on the scope of a particular authorisation for action (whereby the specific authorisation takes precedence).

RESEARCH

EU support for research is currently geared to strengthening the scientific and technological bases and improving the competitiveness of industry. As far as top-level research is concerned, the Member States' resources can sometimes be overstretched, and it makes sense to lump together certain activities. Having Member States exchange information and experience can help to support national research efforts and technological development and strengthen the EU's international competitiveness. Thought should also be given to the current use of research work to underpin Community aims. For instance, using research policy for cohesion purposes may work to the detriment of supporting higher-quality projects or achieving European added value. It should also be borne in mind that research aims may reflect a range of political options on the part of the Member States (e.g. genetic and nuclear research). In other words, the Member States' political responsibility for deciding on and financing their own research policies should not be hampered by centralised EU objectives.

Demands

Restrict EU research policy input to the provision of financial support for cost-intensive research which can no longer be afforded by individual Member States, and in areas where there is European added-value potential, complementing efforts made by the Member States. In all other cases, revert to international research cooperation on an intergovernmental basis.

Ensure that, as part of its research policy, the EU has no powers to regulate in different policy sectors.

Make it clear that the Member States alone have responsibility for deciding on, organising and funding their research policies.

Outlaw EU targets or guidelines from research policy, more especially quantified aims and surveillance or vetting rights. Reduce the "European research area" under the "open coordination" system to the exchange of information and experience.

Give the Member States more leeway in providing firms with risk capital to develop innovative, technologically outstanding products.

Do away with the general aim set out in Article 163 of the EC Treaty, and include any essential factual aspects from Article 163 in the EU's research-policy powers (e.g. Article 164 of the EC Treaty).

TOURISM

The EU has been given no responsibility for dealing with tourism policy. Nonetheless, the European Commission is still trying to force through EU tourism rules by using powers it has under other policy sectors. Tourism is essentially a regional matter. There is no need for EU-wide coordination or regulation.

Demands

Make it clear that the EU is not entitled to enact rules affecting tourism policy, by:

- deleting the reference to tourism in Article 3(u) of the EC Treaty;
- deleting Article 308 of the EC Treaty.

HEALTH POLICY

The EU can complement the Member States' health policies and improve cooperation between the Member States, and can thereby improve preventive health work. Above all, an exchange of information and experience on health policy issues at EU level can support Member States' efforts to deal with health risks which cannot be handled in isolation in the Member States. The EU can also help to broaden the facilities the Member States have to offer in terms of health policy.

However, health policy also reflects a wide range of conditions in the Member States.

Harmonisation would take too little account of the situation on the ground, and would also hamper the Member States' own responsibilities for funding their health policy standards and their health systems. Setting centralised EU targets for health policy standards would be more of a hindrance than a help in carrying out necessary structural reforms in a number of Member States because it would eliminate the competitive element between national systems.

Demands

Restrict EU powers in terms of health policy promotion measures (Article 152(c) of the EC Treaty) to the exchange of information and experience.

No EU targets or guidelines, especially quantified targets (e.g. minimum standards of health insurance), and no supervisory and vetting rights in terms of health protection.

Make it clear that the Member States alone are responsible for the organisation, funding and benefits provided by their health systems.

HOME AFFAIRS

Asylum, visa and refugee policy, immigration policy

With the dismantling of internal borders within the EU, it is now essential to have a Community-wide approach to certain aspects of asylum, visa and refugee policy, and immigration policy.

Asylum-seekers, refugees and third-country nationals arriving for a limited period should be subject to the same conditions of reception, stay and termination of residence in all Member States. Having a standardised deportation practice for illegal immigrants and other persons who are illegally on EU territory will help to avoid abuse of the lack of internal borders. A Community-wide approach will also reduce the immigration pressure and ensure that the burdens can be distributed more fairly within Europe.

European regulations can, though, lead to unchecked immigration or increased internal migration, e.g. by allowing families of third-country nationals to enter the country well in excess of the nuclear family or as a result of the family reunification rules being extended to older children. The result will be even more acute integration problems and a threat to social harmony. EU regulations in these areas also have important effects on the labour market, social protection systems and education. As the Member States are responsible for these policy areas, Community-wide rules and regulations effectively present them with a *fait accompli*. As a result, the Member States lose their powers in areas for which they bear the political responsibility.

Demands

Create a new set of EU powers for Community measures to address the problem of balancing out the burden ("promoting a balance in the distribution of the financial and numerical burden", cf. Article 63(2)(b) of the EC Treaty does not go far enough);

Make it clear that the EU has no powers to regulate on access to the labour market for asylum-seekers, refugees and immigrants;

Transfer back immigration-policy powers currently enjoyed by the EU, in so far as this would appear to be necessary to retain the Member States' right to decide on the number and nature of immigrants, more especially by retransferring powers concerning the conditions for entry and stay, and the norms concerning procedures to be followed for issuing visas for long-term stay and entitlement to stay, including in respect of family reunification, Article 63(3)(a) of the EC Treaty.

POLICE COOPERATION

Cross-border crime and organised crime in Europe require the European security authorities to work increasingly closely and with mutual trust. Given the current status of tasks, Europol is the right approach.

There is no obvious need at the moment for Europol to be given powers of investigation and separate executive powers. Police tasks and powers must remain with the Member States, as their knowledge of local and regional situations are of fundamental importance in solving crimes. There is no obvious need for a scenario in which police tasks can no longer be addressed by cooperation between police forces, but only by a centralised European police investigation authority.

Demands

There would appear to be no need to alter the EU's current division of responsibilities in terms of police cooperation.

JUSTICE POLICY

As far as justice policy is concerned, the EU currently has certain isolated powers, e.g. in terms of cooperation on cross-border civil-law cases, and individual aspects of company law and consumer law. In certain areas of civil law with typically cross-border importance, such as electronic commerce and certain aspects of company law, there may be a need for minimum European standards to enable the internal market to operate.

Over and above this, there may be one-off practical reasons for shifting certain aspects of civil law to the Community, with a view to optimising the internal market, and more especially to prevent fragmentation of jurisdiction by having differing national and one-off Community rules and regulations.

Generally speaking, in a Europe which is growing ever closer together, it is of considerable importance to have European-level legal aid arrangements in terms of civil law and criminal law where there is a cross-border element.

Rules and regulations concerning criminal law affect the Member States' sovereign powers and their basic decisions on justice policy. This is particularly clear in the case of drug-related crime, the "criminal" nature of abortions, and euthanasia. These are decisions which concern national legal cultures which have grown over time. EU rules in terms of criminal law should therefore be restricted to situations with a Community-wide impact.

Demands

In terms of civil law, with a view to optimising the internal market, create Community-wide legal bases in particular areas of typically cross-border importance, e.g. electronic commerce; civil-law

consumer protection; company law; Community-wide commercial protection, e.g. patents, trademarks and models, copyright law (as regards the question of deleting or making more specific certain internal market clauses, cf. the section dealing with the "internal market").

Look into the question of standardising certain aspects of civil law of typically cross-border importance (e.g. trade law, contract law; but excluding: family and inheritance law), with a view to avoiding fragmentation of jurisdiction as a result of national and one-off EU rules (alternative: create EU civil law which parties to a transaction can choose as an alternative to national law). Clarify what powers the Community has to enact legal instruments to combat fraud to the detriment of the Community, and to protect legal aspects which affect the EU exclusively (e.g. electoral fraud in elections to the European Parliament).

Make it clear that criminal-law powers on the part of the Community which go beyond justice cooperation on criminal law matters relate only to the third pillar and then only subject to the conditions set out in Article 31(e) of the EU Treaty — i.e. in connection with the kind of serious crimes listed in the Article with typically cross-border importance. It would, on the other hand, be conceivable for the Community to have a coordinating role in supporting national investigations. Clarify in Article 47 of the EC Treaty that EU rules must not have the effect of harmonising legal training.

Transfer Community powers concerning legal aid in criminal-law matters to the first pillar (hitherto in the third pillar, cf. Article 31(a)–(d) of the EU Treaty).

SOCIAL POLICY

Labour law

The EU's powers to issue labour-law rules and regulations is designed to underpin the freedom of movement of persons by laying down certain aspects of labour protection in all the Member States. However, excessive regulation weighs on the competitiveness of the weaker Member States in particular and allows only inadequate flexibility in reacting in different ways to different conditions on the ground or to changes in the outline conditions.

Demands

Concentrate EU labour-law requirements on minimum standards, and then only in areas which are of basic importance to employee protection (e.g. safety at work).

Social law

Community-wide rules are needed to guarantee freedom of movement and mobility. In addition, minimum standards can help to maintain social harmony and are therefore in the Community's interest.

However, social policy reflects the traditional variety of social security systems and the differing conditions in the Member States. It has to be geared to each national economy. Social policy is an essential element in competitiveness and is, within an economic and monetary union, one of the few remaining safety valves for making a balance between the Member States' differing levels of economic potential. In addition, having EU norms would interfere with the Member States' own responsibility for funding their social standards.

Demands

Limit EU tasks to coordinating rules to guarantee freedom of movement and mobility and to fostering the exchange of information and experience and the evaluation of experience.

Ban any EU targets or guidelines, more especially quantified targets, and any supervisory and vetting rights in the field of social protection.

Clarify the Member States' sole responsibility for organising, funding and delivering social protection, more especially in the following areas:

- health insurance
- pensions insurance
- accident insurance
- unemployment insurance
- long-term care insurance.

Clarify the Member States' sole responsibility for the following areas:

- youth policy, especially social work among young people and the protection of minors;
- family policy, especially financial support for families and provision of kindergarten facilities;
- senior citizens policy, and care for the elderly.

Replace the anti-discrimination cross-sectional clause (Article 13 of the EC Treaty) by having a general equal treatment requirement enshrined in the Treaty.

Ensure that the Member States remain responsible for regulating access to the labour market for nationals of third countries who are legally resident on Community territory.

TAX POLICY

The EU's right to levy taxes

The EU is funded mainly by Member States' contributions to the EU budget, known as "own resources". The EU has no right of its own to levy taxes, and is therefore not politically responsible for the quantum of its income.

An EU tax could be used to improve the transparency of the EU's own resources and create parliamentary (EP) responsibility for the acquisition of EU resources.

However, the right to levy taxes is a core element of states' sovereignty. Any transfer (even a partial one) to the EU would seriously restrict the Member States' room for manoeuvre in terms of tax policy. An EU tax would weaken budgetary discipline at EU level and ultimately add to the burden on the public at large.

Demands

Any proposals for the introduction of a specific EU tax should be rejected.

Harmonisation of Member States' taxes

Tax competition forces down excessive tax rates and forces the state to make more efficient use of its resources, more especially by reducing grants and concentrating on the most important tasks of government. Community-wide tax provisions would tend to increase the taxation burden and weaken the EU's competitiveness.

Harmonisation of Member States' taxes does make sense, though, where it serves the basic freedoms and helps to avoid unfair distortion in what is basically a sensible policy of tax competition.

Demands

Harmonise tax law only in so far as this is absolutely essential for completion of the internal market; more especially, there should be no interference with Member States' right to decide on the nature and quantum of taxes.

Make it clear in the EU state aid control rules (Article 87ff of the EC Treaty) that unfair taxation practices (e.g. the selective exemption of individual firms or business sectors) are not permissible under competition law. If necessary, create a legal basis for assessing taxation aids.

Introduce a legal basis for a harmonised (minimum) capital gains tax in all Member States.

Harmonise Member States' ecological/green taxes, in so far as this serves the aim of cross-border environmental protection or because Community-wide action is essential in pursuit of a specific environment-policy aim.

STRUCTURAL/REGIONAL POLICY

A Community structural and regional policy is an expression of solidarity between well-off and not-so-well-off Member States. It avoids excessive disparities between the regions within the European Union, more especially by reducing the competitive disadvantages of backward Member States in the internal market.

However, the EU's current structural policy is seriously in need of reform. More particularly, the combination of distribution-policy concerns with matters of political influence on the part of the Commission and the European Parliament, the jealous guarding of Member States' acquisitions, and the drive to use regional-policy instruments to redistribute the contributions made by the better-off countries, have led to a situation which is no longer tenable. Detailed EU objectives for the way resources are used are increasingly undermining Member States' regional policies. Detailed funding targets for the EU as a whole are ineffective, as the Member States and their regions are themselves best placed to decide how and where resources should be best used to address specific regional problems. In addition, the current system makes uneconomic use of tax resources; most of the money redistributed within the European Union goes back to the Member States which paid into the fund in the first place. The current system is highly susceptible to error, because of the high degree of regulation and administrative input, and is not suitable for an enlarged EU. In addition, it will not be possible, once the EU has been enlarged, to continue the current policy without a substantial increase in Member States' contributions.

Demands

Reform the EU structural policy: we propose a change of system to a kind of "solidarity fund":

- lump-sum EU transfer payments only to the most needy (i.e. below the average) Member States,
- Member States to have the freedom to make their own decisions, with only a few EU requirements as regards how the money is used:
- for capital projects designed to tap endogenous potential and skills, in the weaker regions of the recipient countries;
- no further obligation for co-funding, measures which have so far been financed via the EU structural funds in the more prosperous Member States should in future be financed only by Member States' own resources.

Retain Community Initiatives for structural problems which have to be addressed Community-wide.

TRANS-EUROPEAN NETWORKS (TENS)

The Community's contribution to developments in transport, telecommunications and energy infrastructure is designed to underpin the internal market, and more especially the cross-border provision of liberalised services. The networking and inter-operability of TENs cannot be addressed adequately at Member State level. In addition, Community involvement in the cost of transport projects makes sense where this is mainly in the Community interest or because the cross-border use that will be made of the results makes it appropriate to contribute to the national infrastructure costs.

However, the use of TEN resources must be geared to real flows of goods and persons, and not to cohesion considerations.

Demands

Look into the need for further EU powers which would serve to consolidate and expand liberalised energy markets in Europe, e.g. by doing away with national obstacles to the cross-border construction of networks (e.g. by preventing the use of conflicting national decisions in dispossession procedures).

Get rid of targeted requirements concerning TENs, more especially the cohesion target (Article 154(1) of the EC Treaty), and remove funding possibilities for TEN projects from the Cohesion Fund. EU supporting measures for telecommunications infrastructure in weak regions are a regional-policy matter. In the interests of clear delineation of competences, this aspect should be completely removed from the TENs, which are an EU task.

ENVIRONMENT POLICY

EU powers currently make it possible to issue targets in all environment policy-specific sectors (e.g. nature conservation, protection of waterways and water bodies, climate control, air pollution and industrial authorisations, heavy plant technology and genetic engineering). There is insufficient clarity as to which sectors of environment policy should be dealt with at Community level and which by the Member States.

Environment policy action on the part of the European Union is justified where environmental interests cannot be adequately addressed by the Member States alone, or bilaterally or multilaterally, because the pollution impact is felt across national borders. There must be case-by-case examination, though, to ensure that Community-wide standards are essential in the interests of environmental protection. Simply preventing "distortions of competition", on the other hand, is not enough to justify having EU powers.

Having standardised EU requirements in areas in which there is no real need for Community action detracts from the sense of responsibility and democratic watchdog powers of local politicians.

Demands

The EU's work in the field of environmental protection should concentrate on

- dealing with problems which have Community-wide (cross-border) impact, e.g. EU standards on air pollution;
- standardised EU-wide material rules which really help to improve the quality of the environment; these should be run as national requirements;
- indispensable Community-wide standards for environmental protection.

Procedural law and regulatory action in the field of environmental protection should be a matter for the Member States. For one thing, such requirements often clash with the subsidiarity principle; for another, they are often not compatible with national legal and administrative structures and can lead to system breakdowns. This does not affect the enactment of "outline procedural rules" whenever and in so far as these are essential in terms of complying with, and applying, EC environment law.

Ensure that EU environmental provisions cannot be used as a basis for setting targets in terms of taxation or energy sources, or land-use planning policy, or the quantitative management of water resources.

Make it clear that the EU has no powers to vet the way Member States apply environmental law, and has no enforcement authority of its own.

HEALTH AND CONSUMER PROTECTION

Having health and consumer protection dealt with at Community level provides a high level of food safety. It is not possible to carry out 100% checks on the origin and quality of food and feedstuffs and their various ingredients, which is why real safety will always depend on having high EU standards.

Consumer protection provisions serve to safeguard the economic interests of consumers and strengthen product competition within the Community. However, in harmonising health and consumer protection provisions, the basic conditions on the ground, e.g. manufacturing traditions, have to be borne in mind.

There are good grounds for moderation when it comes to creating EU supervisory rights on health policy issues in the Member States. They violate the basic principle whereby enforcement is essentially a matter for the Member States. In addition, having EU surveillance rights might well show up administrative deficiencies in the Member States, but they cannot deal with them. In cases where administrative action on the part of the EU may exceptionally be needed, thought should be given to whether the current inadequate level of legal protection against EU enforcement measures and sanctions could not be improved by reforming the Treaty violation procedure or by setting up an upstream arbitration procedure.

Demands

Restrict the EU's powers of action in the field of health and consumer protection for all commercial and agricultural products and services dealt with in intra-Community trade, and focus health and consumer protection on food law and, in association, animal feed, veterinary law and plant protection.

As regards application of the EU's consumer policy aims, ensure that the enforcement of Community law continues to lie with the Member States. Using existing authorities must take precedence over the creation of new ones. Likewise, consumer information should remain a matter for the Member States.

Replace the cross-sectional Article 153(2) of the EC Treaty as part of the drive to broaden the scope of EU authorisations for action to include consumer protection aspects.

TRANSPORT

To enable modes of transport (e.g. railways and road haulage) to operate across national borders and to offer their services internationally, there is a need for technical standards to be brought into line, for network access (e.g. railways) and for the procedure for authorisations to be harmonised. By creating a common transport market hand in hand with the standardisation of competition conditions, it will be possible to boost the efficiency of the transport system. Freedom to provide services (more especially, cabotage) enhances the quality of the service and reduces prices, the number of journeys and environmental pollution.

The Community's transport policy must bear in mind that the Member States themselves are responsible for providing a public transport service for the common good. As far as road safety is concerned, the Member States can as a rule be left to decide, by reference to their own national situations, which rules are needed to guarantee road safety and what sanctions are called for.

Demands

Replace the present non-specific target setting of the common transport policy by responsibility-restricting, specific aims.

Limit EU responsibility for matters of road safety to technical provisions (e.g. law on road use authorisations).

Clarify the Member States' responsibility for deciding what form public transport should take.

COMPETITION POLICY

Anti-trust law

Community anti-trust law guarantees fair competition and legal certainty within the EU and in global terms. It has to be said, though, that Community anti-trust law is threatening to undermine Member States' anti-trust law in cases of purely national interest. This would adversely affect the different competition tendencies and traditions in the various Member States.

In addition, the broad scope of EU anti-trust law results in latent legal uncertainty for firms, which will have to cope with the risk of agreements being rendered null and void if the Commission pushes ahead with its proposed "legal exception system".

A further problem is that there are insufficient administrative resources available to the Commission to deal with the current workload of cases under EU law.

Demands:

Create an autonomous European anti-trust supervision scheme, at the same time making a distinction between EU lawmaking in anti-trust matters and responsibility for the supervisory function.

Restrict European anti-trust law to (important) cross-border cases.

Create a binding system for the advance notification and authorisation of restrictive agreements.

State aid law

There must be unstinting support for the aim of EU state aid law, which is to guarantee fair competition within the EU by preventing any competition over grants. Firms would also be given more legal certainty if there were more precise aims within primary legislation in areas of European significance.

However, EU state aid law must not unreasonably affect the ability of Member States and regions to pursue an autonomous regional policy. It must remain possible to overcome regional disparities (measured in terms of a country's regions, and not the EU average).

As far as public services and utilities are concerned, it must be possible to grant state aid so long as the work is for the common good.

Demands:

Clarify the concept of state aid, e.g.:

- for state aid not to be permissible, there must be a significant adverse effect on competition and trade in the EU;
- general location grants¹ must qualify for state aid so long as they benefit not just single firms, but any firm in the same competitive situation (e.g. non-discriminatory tax advantages for relocating firms).

Allow leeway under contract law for Member States and regions to run a more autonomous national regional policy to overcome regional disparities and problem situations (e.g. border areas, crisis-hit companies, regions undergoing industrial change etc.).

Guidelines on state aid law should be decided as part of Community lawmaking procedures, not just optionally as hitherto provided for in Article 89 of the EC Treaty.

¹ But not investment aid.

As regards public services and utilities:

- clarify the permissibility of state aid designed to compensate for additional costs accruing to firms which provide a service of general economic interest, as a result of that firm performing work for the common good.
- make it clear that state aid regulations do not apply to "non-economic" activities.
- make it clear that Member States' definitions of public services and public utilities and the resources they use to perform these tasks are subject to checking only to ensure there is no abuse.

INTERNATIONAL RELATIONS (EUROPEAN SECURITY AND DEFENCE POLICY)

In terms of international relations, Europe is facing enormous challenges. Globalisation, terrorism and the geopolitical security situation all require an enormous effort. Against this background, when we decide who does what, we have to bear in mind that European policy is bound to develop much more dynamically here than in most other sectors.

It is in the vital interest of the European Union, the Member States, business and the public at large that Europe should show itself to be decisive and forceful and willing to reflect its economic strength. This is also of basic importance in terms of Europe's own image of itself. The European division of powers must therefore strengthen the capacity of Europe to assert itself within the framework of existing coalition systems.

On the other hand, the Member States show little inclination to relinquish any of their own sovereignty in the field of external security and defence policy. It follows, then, that, in a transitional period, inter-governmental cooperation will have an important role to play.

Demands

The following areas should be a matter for the EU:

- external trade policy (including services and intellectual property), the external aspects of the internal market, and certain selected and closely defined globalisation issues;
- International monetary policy; external representation of the euro zone;
- military and civilian space policy and arms policy (as an aspect of the internal market and/or industrial policy) with a common procurement policy (a European arms agency);
- external representation of the EU in third countries and in international organisations and conferences, on matters where the EU has sole responsibility;
- agreements with third countries and international organisations, in accordance with the EU's responsibilities vis-à-vis the Member States; associate status as good neighbourly policy.

The following areas are currently a matter for inter-governmental cooperation:

- guaranteed mutual military assistance within the EU (where appropriate, as "reinforced cooperation");
- gradual development of rapid reaction forces into a European army (to be used only for missions as rapid reaction forces outside a coalition mission, not for collective self-defence), with the requisite political and military structures and capacities;

As regards common external security and defence policy:

- combating international terrorism;
- international policy on arms control, arms reduction and non-proliferation;
- relations to third countries;
- civilian rapid reaction in third countries; civilian crisis prevention;
- cooperation in and with NATO;
- cooperation in terms of external cultural policy;
- cooperation in the United Nations, including having a joint seat for the EU on the Security Council;
- basic principles of development policy;
- joint consulates to provide consular services.

As this policy sector is currently undergoing rapid change at European level, it is necessary to make use of and develop instruments under "reinforced cooperation", constructive abstention and opting-out, as an extension to Community institutions, mechanisms and instruments.

Insofar as, and for as long as, these policy sectors remain a matter for inter-governmental cooperation, the various procedures should be adapted to the specific nature of international relations. Decision-making power will lie with the European Council, which then takes its decisions unanimously and forwards them to the foreign ministers (acting as the Executive Council). The various groups and bodies reporting to the European Council will take their decisions by a majority vote.

In crisis and conflict situations, the international community needs clear channels of communication; at the same time, military and civilian forces need clear chains of command. For that reason, the Commission — acting as the European Council's secretariat — must be responsible for common external security and defence policy. To that end, the same person should hold the posts of Commissioner responsible for external affairs and the Council's High Representative for external security and defence policy.

The European Parliament's involvement is by way of its unrestricted budgetary powers, the ratification of EU international agreements, and the right to obtain information and express views.