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NOTA DE TRANSMISIÓN

De la: Secretaría

A la: Convención

**Asunto: Contribución de D. Paraskevas Avgerinos, miembro titular, y de
D. Panayotis Ioakimidis, miembro suplente
"Proyecto de tratado constitucional: observaciones preliminares"**

El Secretario general de la Convención ha recibido la contribución adjunta de D. Paraskevas Avgerinos, miembro titular de la Convención, y de D. Panayotis Ioakimidis, miembro suplente de la Convención

P. AVGERINOS

MEMBER OF THE CONVENTION

PROFESSOR P.C. IOAKIMIDIS

Alternate Member of the Convention

Note

Topic: The Draft Constitutional Treaty: Preliminary observations

1. The Preliminary Draft Constitutional Treaty of the European Union (EU), presented by the Chairman of the Convention Valéry Giscard d'Estaing, contains a number of positive elements. However, it contains or implies a good number of other controversial provisions which need careful examination. It is also marked by serious omissions. This short note contains our very first preliminary remarks to what is proposed. Our aim is to contribute to elaborating a constitutional treaty that would enable the development of the enlarged European Union into a democratic Political Union based on the "Community model" and the principles of equality, solidarity and subsidiarity, capable of shaping policy and making decisions. A European Union with a legitimate and effective governmental system. More specifically:
2. One important element which is certainly missing from the Constitutional Treaty is a clear idea and a comprehensive model on how the European Union will be governed and make decisions when it reaches 25 or 27 member states. How, that is, to ensure effectiveness in policy shaping and decision-making in the enlarged Union. The institutional changes proposed are important, if some of them clearly controversial, but far from addressing the problem of effectiveness and governability of the enlarged Union. The enlarged European Union needs strong, effective and legitimate government in order to survive the manifold challenges and manage diversity. This is not as yet provided for by the skeleton Constitutional Treaty. But according to the Laeken Declaration this is supposed to be one of the overriding tasks of the Convention.

Related to this are two other major shortcomings in the skeleton of the Constitutional Treaty:

- (i) the absence of any concrete provisions for more effective macroeconomic policy-making and coordination in the context of economic and monetary Union (EMU)
- (ii) the absence also of concrete provisions for enhancing the social dimension of the EU

3. Moreover, the Draft Text seems to lean too much towards an intergovernmental organization of the enlarged EU. Our view is that the community model and the current balance between the supranational and intergovernmental institutions must be maintained.
4. As regards the specific articles of the Draft Text:

Article 1

- “European Union” is preferred as the official name.
- A Union of European States **and Peoples** must be added.

Article 2

“Solidarity” must be added.

Article 3

Replace “high level of employment” with **“full employment”** (as laid down in the Conclusions of the Lisbon European Council – 2000).

Article 4

Acceptable

Article 5

- Make explicit reference that European citizens enjoy **“multiple identities”**

Article 6

Direct and full incorporation of the Charter as legally binding provisions is preferable. The important thing, however, is to have the Charter as a legally binding document.

Article 7

Acceptable

Article 8

- The primacy of Union law must be clearly established in the Constitutional Treaty.
- Article 308 must be retained.
- Not to involve “national parliament” in *ex ante* monitoring of the subsidiarity principle.

Articles 9 – 13

- Only “exclusive competences” to be mentioned *expressis verbis* in the Constitutional Treaty.
- No need to mention in the form of a catalogue with legal force other competences.

Article 14

- The reference to the “single institutional framework” is necessary. The pillar structure must be abolished.
- The reference “to areas in which competence belongs to the Member States and is jointly exercised by them” raises a number of very serious questions about the institutional structure and the process of policy-making. It needs careful consideration.

Article 15

- The provision about the tasks of the European Council included in the TEU is the right one to be transferred in the Constitutional Treaty.
- The European Council must not become an ordinary EU institution.

Article 15bis

The content of this article has not yet been discussed in the Convention.

Article 16

Acceptable

Article 17

Acceptable

Article 17 bis

The content of this article has not yet been discussed in the Convention.

Article 18

Very important to establish clearly “the exclusive right of initiative” (monopoly) for the Commission.

Article 18 bis

The content of this article has not yet been discussed in the Convention.

Article 19

We do not see the need for the creation of such an institution (Congress).

Articles 20 - 23

Acceptable

Article 24

Acceptable. Need to simplify the instruments.

Article 25

Acceptable. Need to simplify the legislative procedure (“Laws”, “framework laws” are good terms).

Articles 26 – 28

Acceptable

Articles 29 – 31

These articles need careful drafting so that to avoid creating confusion and inconsistencies in the implementation of policies in the respective spheres of action.

Article 32

Acceptable. Need to simplify and clarify provisions on enhanced cooperation.

Articles 33 – 37

Acceptable

Articles 38 – 40

Acceptable. Need to enhance the budgetary powers of the European Parliament.

Article 41

- Need to ensure the unified, coherent and visible representation of the EU in the world.
- Need to unify the position of High Representative with that of the Commissioner for External Relations.

Article 42

Acceptable

Articles 43 – 44

Acceptable

Articles 45 – 46

We do not see the need for including these provisions (suspension/withdrawal of a member state) into the Constitutional Treaty. They are bound to create institutional uncertainty and confusion.
