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- "Thoughts on the EC Treaty provisions regarding public health".

Valmistelukunnan jäsen Marietta Giannakou on toimittanut valmistelukunnan pääsihteerille liitteenä olevan esityksen.

“THOUGHTS ON THE EC TREATY PROVISIONS REGARDING PUBLIC HEALTH”

It is true that the procedure initiated with the establishment of the Convention for the Future of Europe has provided every European with the opportunity to address issues that affect his/her life and which can be tackled by the European Institutions. Perhaps one of the most important issues is the one referring to the measures regarding Public Health and its protection.

As the EC Treaty now stipulates, the European Community (and consequently the European Union) has as its task to promote, *inter alia*, a high level of social protection and the raising of the standard of living and quality of life for all those living in the Member States (Art. 2 EC Treaty). In order to achieve this task, the activities of the Community include, *inter alia*, a contribution to the attainment of a high level of health protection (Art. 3 EC Treaty). These two general provisions have been analysed in more detail in Articles 95 and 152 of the EC Treaty.

More specifically, Art. 95 contains provisions regarding the approximation of national legislation and administrative rules of the Member States in order to achieve the establishment and functioning of the internal market. This approximation is to be achieved through measures adopted by the Council, after a relevant proposal by the Commission, which must base its proposals, especially when they refer to health issues, on any new relevant scientific developments. Within this harmonising process, the same Article stipulates that if a Member State has to face a specific problem on Public Health, arising after the adoption of relevant harmonising measures, it must notify the Commission which will examine the necessity of proposing to the Council the adoption of new measures, appropriate for this problem.

Art. 152 contains more detailed provisions regarding Public Health. When preparing or implementing Community policies and activities, the European Institutions must ensure a high level of human health protection. Their actions are to be complementary with regard to national policies of the Member States in the field of Public Health. They shall be directed towards improving Public Health, preventing human illness and diseases, and obviating sources of danger to human health. The major health scourges are to be fought against, by researching into their causes, transmission and prevention. Health information and education are to be promoted also. This complementary action will also aim in reducing drugs' related health damage and providing relevant information in order to strengthen drugs' prevention. The Member States have to co-ordinate their relevant actions among themselves. The Council has to adopt measures regulating various areas clearly stipulated in Art. 152 para. 4. In any case however these measures shall respect the national legislation regarding the provision of health care.

This framework, although designed to serve the main purpose of the EC, which is the internal market, nowadays, given the progress achieved in the unification process of the EU, needs to be revised in order to improve its effectiveness. This need has been identified given that an enlarged European Union, comprising up to 25 Member States, must be better prepared in tackling Public Health hazards.

More precisely, given the complementary nature of all Community action, according to Art. 152, in the field of Public Health with regard to Member States' action, it is obvious that the Community can have only a "reactive approach". This means that the Member States must first act in order to tackle a Public Health hazard, and if their action is not satisfactory, then and only then, it is possible for the Community institutions to adopt measures in order to complement the national policies and activities. This is a clear example of the implementation of the principle of subsidiarity as stipulated in Art. 5 of the EC Treaty. In order to better understand this, it is useful to examine two examples. With regard to Communicable Diseases (ie influenza), the Community cannot organise an integrated response (investigation of outbreaks, vaccination strategy, stockpile medicines), as it is limited to its complementary competencies. Also in cases of possible Public Health threats (ie bioterrorism), the Community cannot take relevant action at EU level in order to control movements of people, sharing of vaccines, containment and quarantine measures etc. This reduced ability of the Community to take action is further hampered by the imperfect implementation of Art. 95. For instance, the consumption of the product of tobacco, essential for smoking – a classic Public Health hazard, cannot be controlled at EU level – although Art. 95 could be used as legal basis for adopting restrictive measures – with regard to the advertising of the product, its availability (it has been impossible for the EU to set common age limits), or its contents (it has also been impossible for the EU to set common tar levels).

This very dangerous situation will deteriorate if Art. 95 is revised in such a manner as to remove any reference to Public Health issues. Such a revision could eliminate any possibilities of the Community to adopt measures in relation to quality, safety and efficacy criteria and approval procedures for health products (pharmaceuticals, medical devices, health foods, and medical equipment) in Europe.

In order to provide the European Union with a more effective possibility to intervene in the field of Public Health, it is suggested to introduce to the new constitutional document that will be produced by the Convention, a more "proactive approach", allowing the European Institutions and the Member States to take the necessary measures in good time.

A proposal towards that direction include the following:

- ◆ The incorporation to the provisions of the new constitutional document referring to the fundamental values of the European Union of a clause covering the fundamental human right to health;
- ◆ The inclusion to the provisions of the new constitutional document of all action regarding Public Health as a shared competence between the European Institutions and the Member States, thus allowing the former to act along with the latter in creating the standards for a Europe-wide public health system. Such an amendment will cover any competence gap in the very sensitive area of public health and will allow for a better harmonisation – and at some points even co-ordination – of the Member States relevant activities.