

**CONV 39/02**

**CONTRIB 21**

**BEGELEIDENDE NOTA**

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van: het secretariaat

aan: de Conventie

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Betreft: Bijdrage van de heer Matjaž Nahtigal, lid van de Conventie

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De secretaris-generaal van de Conventie heeft van de heer Matjaž Nahtigal, lid van de Conventie, de bijdrage ontvangen die in bijlage dezes staat.

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**Written contribution by Dr Matjaž Nahtigal,  
member of the Convention on the future of the European Union**

As to the issue of a suitable level of individual competencies within the Union, it should be taken into account that the development of the Union is dynamic, and enable further dynamic development of the integration. Nevertheless, the distribution of competencies between the supranational and national levels in individual fields should be clearly defined. One of the key tasks of the Convention is to try to find the mechanisms for defining the EU competencies in a simple, systematic, coherent and transparent manner.

The size of the enlarged Union, the characteristics of the present international environment and the challenges that the nations, their citizens and regional integrations are facing as a result of globalisation create a need for better co-ordination between the states in individual fields and for extending common or single policies to new areas. At the same time it should be reconsidered which issues, currently within the competence of the EU, should be re-attributed to the Member States.

**The principles of and mechanisms for the distribution of competencies**

In addition to defining the areas of competencies, it is also necessary to define methods, mechanisms for and principles of their distribution and implementation.

The (new) distribution of competencies should take into account **the principles of subsidiarity and proportionality as well as mutual loyalty towards the Union**. The principle of proportionality is the principle and the doctrine that the new distribution of competencies should especially take into account and analyse in detail. This could represent one of the primary tasks of the European Court of Justice.

A possible mechanism of distribution of competencies would be the establishment of a **catalogue of competencies** between the Union and the Member States. However, should we wish to establish a fixed catalogue of the competencies, the dynamics of the European integration process would be ignored.

Another possible mechanism would be the **division of competency categories** into exclusive, conditional, supplementary and co-ordinating competencies – as proposed by John Bruton. In this way the competencies of the Member States would not be specified, but it would be assumed that the Member States execute everything that is not executed by the Union.

Whatever the chosen approach, it needs to be taken into account that no catalogue can ever be definitive. The new distribution of competencies should envisage the possibility of transfer of competencies either to a lower level or to the Union. The distribution of competencies should not be irreversible. The scope and intensity of policies on the European level should be defined in accordance with the capacity of the Union to perform a specific task.

The following question is important: *How can the EU and the Member States exercise their shared competencies?* The mechanisms for solving the issue of shared competencies could be either framework legislation or open co-ordination method. Here one should take into account the supremacy of the European law over the national laws and of direct effect of framework legislation in the event that it is not implemented by the state (principle of supremacy in direct effect).

### **Simplification of the Community law**

Concerning the **simplification of the Community law** we are in favour of a renewed assessment of the *acquis communautaire* and the deregulation as well as the transfer of regulation from primary into secondary law, whenever possible. We agree with the simplification of the existing Community legislation and entirely support the proposal of the European Commission as presented in the white paper on European Governance. The extensive and exaggerated regulation of the internal market should start to be decreased.

### **Control over the application of the principle of subsidiarity and proportionality/distribution of competencies**

In order to facilitate the control over the adherence to the principle of subsidiarity and proportionality, and to ensure that the measures taken within the Union are not excessively centralised, all objectives and competencies of the Union in individual areas should be set out and defined in detail. As a rule, the directives of the Community/Union should be designed in the form of framework legislation, and should more frequently rely on the method of Open Co-ordination.

In judicial control over competence disputes and the implementation of subsidiarity and proportionality the ECJ should establish a partner dialogue with the constitutional courts of the Member States. The incorporation of the chart on fundamental rights and liberties would further enhance such dialogue. The chart on fundamental rights and liberties should ensure immunity of the EU citizens towards excessive intrusion of the European institutions into their rights and liberties.

### **New competencies at the supra-national level**

The challenges of modern international environment call on Europe to become a stronger and more prominent factor of peace, stability and development and consequently, to take up greater global responsibility. Europe must strengthen its role in international relations. It therefore needs a consistently designed and concerted policies of external trade relations, political relations and humanitarian and development aid, that would be implemented in a coherent and co-ordinated manner. Moreover, the key issue concerns the European and also global security. The enlarged Europe will face new security challenges. Therefore, a more systematic and consistent approach to the neighbouring areas/countries of the future enlarged European Union will be needed as well as greater coherence of policies for ensuring internal and external security. Extending the competencies thus seems to be required in all these areas.

The intergovernmental working method in the CFSP does not give to the EU the necessary power at the international scene; therefore partial and gradual communitarisation of these activities is needed (the civil dimension of the EU foreign policy – including crisis management by non-military means). This means more decision-making by qualified majority; in the transitional period, the right to initiative should be shared by the Member States, the European Commission and the High Representative; the resources for the implementation of these policies should be limited to those applied by the Community; the issues related to the military domain of the ESDP should continue to be subject to intergovernmental co-operation.

In the field of internal security, the following domains should fall under Community working methods: border control, asylum, visas, immigration, accommodation and freedom of movement of the third-countries nationals, judicial co-operation in civil matters, administrative co-operation, co-operation of the police and judicial authorities in criminal matters.

The EU competencies in the first pillar should mainly consist in ensuring an efficient functioning of the single market as well as providing and encouraging competition. The single market should be established in the remaining areas (telecommunications, the public services sector, financial services, postal services, and energy sector). In all areas within the first pillar where the EU has exclusive competencies, the objectives of the EU policies should be set clearly and unambiguously. The increase in the EU competencies is necessary in the field of environmental protection.

In all areas of the existing Treaty arrangements covering the first pillar the Commission should keep its exclusive competency of initiative.

Greater mobility of labour should be made possible. Such mobility calls for greater centralisation of immigration policy, which should, therefore, become part of the Community approach. To this effect, the transfer of individual pension insurance (public or private) should be made possible. The EU should continue to be responsible for other areas. However, it should remain possible to return the responsibility for some areas to the national level if this does not damage the principles and functioning of the internal market and its competition rules.

### **Redefining the levels of certain competencies**

Solidarity and co-operation are among the key challenges of the EU. The EU has to become a development community. An important goal is to attain social and economic cohesion among its members. It would be necessary to simplify the rules of redistribution policies with the priority orientation based on the principle of solidarity and/or ensuring a faster development of some less developed members. A criterion to qualify for cohesion assistance should therefore be the development of a country. In principle, redistribution policies should be within the national competence. The Union should not determine the way in which the Member States implement the policies and allocate the EU funds at the sub-national level; however, it should keep the control over the use of funds. Re-nationalisation of cohesion and agricultural policies does not make sense; nevertheless, it is necessary to re-assess and re-define them.

### **Competencies at the national level**

The areas and/or activities predominantly reflecting the diversity of preferences and national cultures in Europe should to a large extent remain within national competencies. Furthermore, the heterogeneity of preferences should prevail in the fields of education, training, culture and science.

### **Enhanced co-operation**

In order to respond to new challenges, the EU needs to be flexible and have the possibility of further integration in new areas. Therefore, the option of enhanced co-operation is indispensable. The following principles have to be considered: such co-operation should be in compliance with the provisions of the treaty; openness as a fundamental principle; solidarity which should envisage methods for enabling others to become subsequently engaged in enhanced co-operation; the rights of those not participating should not be affected in any way; the *acquis communautaire* pertains to the exclusive competence of the EU and should not be affected.

## **Open Method of Co-ordination**

In the areas, such as co-ordination of economic policies, social protection, combat against social exclusion, employment, the Method of Mutual Surveillance and the Open Method of Co-ordination represent an effective combination of maintaining national competence and responsibility, ensuring the interest of the entire community and the process of mutual learning. We are of the opinion that this method should not be used in cases where legislative action under the Community method is possible.

These two methods allow for procedures and standards with great margins of variation except in case of the Stability Pact rules. The Commission's coordinative role is crucial in this respect. Therefore a neutral, highly professional Commission is needed that would be capable of designing suitable structural indicators, efficiently manage the complex system of co-ordination, mutual control, bench marking and review of achievements. In co-ordinating economic policies where the rules and objectives are clearly defined and the system of sanctions is in place, the entire system of surveillance procedure should be upgraded in order to allow for solving problematic trends at an early stage. In all areas covered by these two methods, a broader and more systematic democratic control is required, regular mechanisms for reporting to the European Parliament should be established. National parliaments should have an overview and control of these important activities of the Union and its Member States that could be exercised through general control of European affairs and through the control of their national governments. Only by enhanced democratic control and discussions at the national levels, will the process of co-operation and co-ordination of social policies be politically feasible, otherwise certain factors could make Europe a scapegoat in the implementation of politically sensitive changes, as in the case of the implementation of EMU. The role of the public in reviewing the realisation of the objectives set could be an instigation and motivation for attaining benchmark objectives.

In the area of EMU the status of the euro-group should be regulated and included in the treaty. Its democratic legitimacy should be consolidated by introducing the obligation of reporting to the European Parliament.