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Betreft:	Bijdrage van professor P.C. Ioakimidis, plaatsvervangend lid van de Conventie: "Antwoorden op de vragen van de Verklaring van Laken"

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De secretaris-generaal van de Conventie heeft van professor P.C. Ioakimidis, plaatsvervangend lid van de Conventie, de bijdrage ontvangen die in bijlage dezes staat.

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**"ANSWERS TO THE QUESTIONS**  
**OF THE "LAEKEN DECLARATION"**  
**FOR THE FUTURE OF EUROPE"**

*This text contains preliminary answers to the questions posed by the Laeken Declaration elaborated by Professor P.C. Ioakimidis, alternate Member of the Greek government as a contribution to the ongoing debate in the Convention.*

## I. A BETTER DIVISION AND DEFINITION OF COMPETENCE

### 1. IN THE EUROPEAN UNION

## **1. How can the division of competences be made more transparent?**

The division of competences in the Union – as a system of “sharing of competences” – constitutes an evolutionary process of a flexible character that allows the Union to adjust to new challenges. The division of competences may become more transparent, but not rigidly so. There should be no regulations that freeze the flexible and evolutionary character of the division of competences. Some steps towards the direction of transparency may include:

- Fixing more stringent criteria for the division of competences (principle of subsidiarity, proportionality, solidarity and consistency).
- Defining in a transparent manner the strategic political objectives pursued by the Union with the reformulation of values and objectives.
- Defining the legislative and executive instruments and the scaling of values.

## **2. Can we make a clearer distinction between three types of competence: the exclusive competence of the Union, the competence of the Member States and the shared competence of the Union and the Member States?**

- At a first glance **NO** we cannot make a clearer distinction between the three types of competence, due to the fact that a clearer distinction would lead to the deterioration of the aquis communautaire, renationalisation of policies and the “freezing” of the integration process.
- There could only be a distinction between exclusive and shared competences. In the exclusive sphere, CFSP/ESDP must be included. It can also be acknowledged that in certain areas the Union has complementary competences. It can be further acknowledged in the Treaty that the remaining competences are to be “shared” between the Union and the Member States.
- A guiding principle is that the Union is a “system of sharing of competences” and not a system of strict distribution of competences.

- The EU must remain a *sui generis* structure. Article 308 of the Treaty<sup>1</sup>, which allows Member States to decide unanimously for the transfer of competences needed to respond to new challenges, must be preserved. A clear and rigid distinction of competences would not allow the EU the capability to redefine its competences in response to international and internal developments, such as technological and social ones.
- The nation-state level and the European level need to preserve an indissoluble bond in order to guarantee accountability and effectiveness in the formation process of European policy.
- The shared competences of the EU cannot be clearly differentiated from the other spheres, since this would not allow the necessary degree of flexibility to the Treaties of the EU. This would reduce the dynamic of the European integration that must be preserved.
- There is the danger that some member-states will benefit from such a development and renationalize vital EU policies (i.e. CAP, structural policy, etc). Consequently, the competences belonging to the EU will be rigidified at a time when the European structure is evolving.
- The solidarity between present and future member states will be weakened.
- It will lead to an institutional strife, between the EU institutions, the member states and the regional entities. It will intensify the transforming geometry of the EU in relation to national structures, cultures and mentalities.
- It will lead to the alienation of the European citizens from the Community organs. The differentiation of EU competences will contribute to the creation of a system that will be incomprehensible for European citizens.

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<sup>1</sup> “If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the EP take the appropriate measures”. (ex article 235)

### 3. At what level is competence exercised in the most efficient way?

- For the moment, the answer cannot be precise or clear. The determination of the most efficient level consists of a *case-by-case* method. The nation-state level and the European level need to preserve an indissoluble bond in order to guarantee accountability and effectiveness in the formation process of European policy.
- The European level is very effective when competences, both in their content and effects, spill-over the borders of the state. These competences must be dealt with in a wider context beyond the national level. For example, the environmental and immigration policy must be dealt with by applying the *aquis communautaire*. However, when a competence, such as the environmental policy, is exercised at the European supranational level then the political cost of such a policy faced by the governments of the member-states is minimized and the possible discontent of certain interest groups within a member-state will be confronted by national governments who will argue that they are not to be held accountable for a policy which is exercised at a European supranational level.
- On the other hand, the nation-state and regions consist the most effective levels for the exercise of competences that are interwoven with the local particularities of the member-states but that are not contrary to the principle of solidarity. For example, a policy in the fields of education and culture could not be exercised at the European level because such fields are differentiated in each member-state and, thus, a uniform policy would not be effective.

### 4. How is the principle of subsidiarity to be applied here?

- The principle of subsidiarity does not apply to the exclusive competences of the Union. The Treaties assigned these competences to the Union and they serve the common objectives of the European Union.
- The shared competences of the Union, meaning those that do not belong wholly to either level (European or national), are subject to the principle of subsidiarity. These competences could be reallocated based on whether the EU can exercise effectively the policy in question. This will lead to the greater use and application of the principle of subsidiarity.

- The principle of solidarity must consist the guiding principle for the assignment of a competence at a European or national level. The principle of solidarity must co-exist with the principle of subsidiarity.
- A model must be created that will be applicable, provide legal security and be able to develop. The principles and objectives of each policy as well as the necessary means for its realization must be supervised.

**5. Should we not make it clear that any powers not assigned by the Treaties to the Union fall within the exclusive sphere of competence of the Member States?**

Although the Union is based on the principle of conferred powers, it would not be wise to officially state in the text of a Constitutional Treaty that any powers not assigned by the Treaties to the Union are to fall within the exclusive sphere of competence of the Member States.

The notion of powers belonging to the exclusive sphere of competence of the member states could lead to a rigid system of delimitation of competences/powers. The EU must maintain its flexible and dynamic character in the development of its actions (art. 308, etc). It is extremely difficult under the current circumstances to formulate such a rigid delimitation of competences, which strictly belong to the member state (or to the regions).



**6. What would be the consequences of this?**

- This will lead to a precise delimitation of competences of those that belong to the European Union and of those that belong to the member state (meaning the exclusive competences of the Union and the competences of the member states). As it was mentioned in the answer to question 2 (if a clearer distinction between the three types of competences is needed), a precise delimitation of competences challenges and undermines the dynamism of the Union.
- An equally important consequence is that such a precise delimitation ignores the sphere of shared competences, the competences that are subject to the jurisdiction of the European Union and of the member states. This sphere of competences is essential in order to preserve the dynamism and flexibility of the European Union.

**7. Does there need to be any reorganization of competence, while respecting the “acquis communautaire”?**

- The flexible character of the Union must be preserved. The EU must be based on the *acquis communautaire* and must utilize the outcome of the European integration efforts, in order to respond to the challenges of its time.
- To avoid the dilution of the *acquis communautaire* we must reject the precise delimitation between the three types of competences (the exclusive competence of the Union, the competence of the member states and the shared competence of the Union and the member states), as well as the institution of a second legislative body that will consist of representatives of national parliaments.
- We must also update and strengthen the *acquis communautaire* enhancing, thus, the role of the European Commission with its elevation as the central governing body, and legitimising the EU through electoral procedures (i.e. the election of the President of the Commission) and by consolidating the three pillars of the Union in a single community pillar (the first pillar).

- Furthermore, the Community method<sup>1</sup> must be preserved. This method has proven its efficiency, expressing the will of the people and the function of long-term institutions. The implementation of this method would be essential in the frame of the enlarged Union, where the determination of the common interest will be made more difficult. This method needs to be implemented even in areas where the decisions of the Union are not of a regulative character.
- Rearrangements can refer to the deletion of provisions that have been obsolete for sometime, the obliteration of conflicts or contradictions based on different provisions of the Treaty and the adaptation of the provisions to new technological developments.

#### 8. How can citizens' expectations be taken as a guide here?

- By enhancing the notion of “citizenship” through its direct enrichment with welfare factors, which constitutes a precondition for the definition of the notion of ‘social citizenship’.
- By establishing a ‘systematic dialogue’, with representatives of local and regional governments through national and European organisations during the initial stage of policy formation.
- By institutionalising cooperation and interaction between regional and local governments and the civil society, which consists a responsibility of the member states.
- By establishing enhanced partnership agreements in selected areas committing, thus, the European Commission to further consultations in order to guarantee the width and representation of the organisations that participate in these consultations.
- By defining the sphere of shared competence of the Union, in which the “proper action level” demands the participation of the citizens so as to intervene if the two basic criteria, efficiency and public interest, prove that it is needed.
- By using greater flexibility in the implementation of the Community legislation, allowing thus, greater consideration of the differing regional and local particularities.

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<sup>1</sup> The Community method is based on the right of initiative that the Commission disposes of, as an independent institutional organ, to submit proposals and on the decision-making capacity (with qualitative majority) of the Council – with a constant dialogue that stems from the compulsory discussion of the proposals of the Commission.

## **9. What missions would this assign to the Union?**

The missions assigned to the Union are correlated to the citizens' expectations. A social policy, for example, of a "region" can be enhanced if its citizens express their demand for a more dynamic implementation of social policy by the EU.

## **10. And, vice versa, what tasks should better be left to the Member States?**

In what concerns exclusive competences, member states should not be assigned with exclusive competences. However, when referring to shared competences the following areas may be included:

- Nationality/Citizenship Rights
- Cultural issues
- Education
- Basic Social Insurance
- Regional Organization

The above-mentioned tasks should better be left to the member states. Taxation, labor policy, environmental policy, judicial and police cooperation, common foreign policy and defence policy are some of the responsibilities that should be transferred to the European Union. Apart from these, the exclusive competences will be defined, which are not to be under the jurisdiction of member states.

## **11. What amendments should be made to the Treaty on the various policies?**

Without the dilution of the "acquis", the following amendments should be examined:

- i) Simplification of the formulation of relative provisions in the Treaty.
- ii) Reformulation so as to consider the legislation of the European Court of Justice.
- iii) Deletion of provisions that may be considered obsolete.
- iv) Reformulation for the update of the relative provisions, taking into consideration the evolution of the "acquis".

**12. How, for example, should a more coherent common foreign policy and defence policy be developed?**

- The bestowal of legal personality to the European Union consists of a necessary development that would lead to greater transparency in its external representation and which will render the functions of the Community institutions more coherent.
- Gradual communitisation of the common foreign policy and defence policy. This will lead to greater cohesion among the internal security policies and the external relations and action of the EU. The following measures may be considered:
  - Enhancement of the Commission's role in relation to non-military elements of the CFSP. The fusion of the duties of the High Representative of the CFSP and the Commissioner responsible for the foreign relations of the EU, in order to provide greater cohesion and transparency in the common foreign policy.
  - Greater involvement of the European Parliament in all the military actions.
  - The extension of qualified majority voting in the Council in what concerns the non-military affairs of the CFSP.
- Enhancement of the democratic control of the decisions taken in the context of the CFSP along with the enhancement of the role of the European Parliament and of the national parties, which will monitor the behavior of their governments in the frame of the common foreign policy and defence policy.
- Enhancement of the authority of the High Representative of the CFSP along with the capability to take initiative and to regularly organise European Defence Councils at the level of the leaders of the member states.
- Defining the new strategic perceptions of the common foreign policy and defence policy in the frame of the Treaties. Common defence must gradually assume the character of a collective security system based on the principles of solidarity and mutual assistance. The evolution of the European defence towards such a system will operate, complementary, to NATO.

### 13. Should the Petersberg tasks be updated?

- The common defence system must be developed from a crisis management mechanism to a collective security system based on the provision of “mutual assistance”.
- On this basis, the Petersberg tasks may be clearly defined (including terrorism).
- The Petersberg tasks<sup>1</sup> must be associated with the whole spectrum of diplomatic activities of the European Union, with its greater economic foreign policy (i.e. accession agreements, preferential trade agreements, developmental policy) as well as with the environmental policy of the Union. In this way the Petersberg tasks will be extended to non-military actions.
- The task of crisis management must be institutionalised so much in the military domain (Direct Intervention Force) as in the political sphere (political protection and managing destructions).

### 14. Do we want to adopt a more integrated approach to police and criminal law cooperation?

- Police and judicial cooperation in criminal matters must be incorporated in the first pillar. This will gradually lead to a decision-making process based on the co-decision procedure and thus combating the high level of distrust prevailing within the Union due to the differentiation of national criminal legislation.
- Member states cannot adequately face individually the problems arising from the inflow of immigrants and of internal security. Terrorism renders the weakness of the nation state even greater.
- An integrated approach at the EU level offers the possibility for a more rapid, efficient and less costly implementation of the actions at an interstate level.
- Enhanced police cooperation will allow for a greater surveillance of the external borders of the EU by the body of the European Border Guards. It will also lead to the enhancement of Europol along with the prospect of the creation of a European Police Force that will carry out the fight against international terrorism and organised crime.

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<sup>1</sup> i) humanitarian and rescue tasks; ii) peace-keeping tasks, iii) tasks of combat forces in crisis management, including peacemaking.

- The enhancement of the judicial cooperation, especially of the Eurojust<sup>1</sup>, is essential in order to approach the action that is exercised by the consulates of the member states outside the EU and thus enhancing the cohesion of the foreign policy of the EU.
- Concerning police and judicial cooperation, an integrated approach can only be achieved with the cooperation of the European Parliament with the national parliaments thus, enhancing the democratisation and transparency of the procedure, principles which are absent from the present approach.
- Concerning police and judicial cooperation, an integrated approach provides the citizenship of the Union with an essential content.
- With the institution of a short-term economic fund in the frame of the European Union, the response to asymmetrical shocks will be more immediate and effective.

#### **15. How can economic-policy coordination be stepped up?**

An institutionalisation of provisions that will lead to the enhancement of macroeconomic policies in the context of promoting the economic union and the creation of an “economic government” must be pursued. This will be achieved by implementing the following policies:

- Harmonizing taxation, particularly the taxation of businesses, capital gains and energy input. Taxation competitiveness must disappear. Taxation solidarity is essential between member states and the peripheries in order to safeguard the entity of the European Union.
- Coordination of fiscal and monetary policy as well as engagement of the Eurozone member states in economic policies that promote stability (re-examination of the Stability Pact).
- The strengthening of redistributive policies for the achievement of real convergence and cohesion in the wider spectrum of the enlarged Union. The development of policies that contribute to the reduction of inter-region and social inequalities must consist a guiding principle.

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<sup>1</sup> A group of judges from the member states based in Brussels, which began its workings in the end of 2001.

- Representation of the Eurozone in the external relations of the Union by one of the Vice-Presidents of the European Commission. This will guarantee the solidarity of the Union's interior.
- Each member state must consult with the rest of the member states, while taking them seriously before taking any decision that would directly affect the whole of the Eurozone.
- Cooperation in research and technology policies as well as in education and social policy. Continuing education and the flexibility of the labour market are essential, especially during period when technology and the professional skills of workers must continuously be upgraded.
- Cooperation in immigration policy, since the immigration policy of a nation-state influences its labour policy.
- Institutionalisation of minimum regulations in relation to labour policy and social solidarity.

**16. How can we intensify cooperation in the field of social inclusion, the environment, health and food safety?**

- By promoting of binding policies in these fields with the creation of the appropriate legal bases in the Treaties.
- By developing transnational exchanges of information, policies and best practices (between national observatories or similar recognized bodies) to help the stakeholders improve their policies and actions, in the forms of joint development of strategies and common dissemination of information, field visits and exchanges of personnel.
- By encouraging peer review and monitoring programs by means of meetings/workshops/seminars on policies or practices.

- By promoting mutual learning and improved knowledge in the context of national plans (where it applies), with the help in particular of comparable indicators.
- By promoting of dialogue at a national and regional level with non-governmental organizations, which will lead to a pan-European network of these organizations.
- By drafting comprehensive legislation.

**17. Should not the day-to-day administration and implementation of the Union’s policy be left more empathetically to the Member States and, where their constitutions so provide, to the regions?**

- Member States and more precisely their regional and local authorities are more aware of the regional/local diversity in social, economic and cultural fields and are thus often best placed to know what will work and what will not. They should therefore be given the opportunity to incorporate their expertise into a EU where all levels of governance shape the European policy jointly.

Member States and their corresponding regions and localities through their specific knowledge and expertise combined with their more efficient-action oriented approach, as well as their organizational capacity could lead to a better governance in the EU. This approach while focusing on the kind of action the Community wants to take, allows other levels of government more room and greater flexibility to develop and articulate the Community policy by allowing a more flexible and “tailor made” shaping and implementation of EU policies (i.e. decentralized entities can optimise output from the local perspective), thus leading to a better achievement of EU objectives.

- It will bring the Union closer to the EU citizens (increasing the **proximity** of the European decision-making process) and increase the involvement of stakeholders leading, thus, to increased legitimacy and acceptance of EU policies allowing for a reduction of the perceived democratic deficit and enhancement of the democratic legitimacy of the Union.
- Citizens will have the ability to identify what level of government (local, regional, national or European) is politically accountable for what responsibilities.



**18. Should they not be provided with guarantees that their spheres of competence will not be affected?**

The initial answer is no, for the following reasons:

- It is questionable whether a delimitation of policy areas between the EU and Member States could effectively determine which actor is better suited to address and manage a specific problem. Such responsibilities and policy areas should be shared between EU institutions, national and sub-national authorities.
- Modern governance requires that beyond delimitating competences and providing guarantees for such delimitations, that the various layers of governments engage in a co-operative process of interaction where all levels of government shape, propose, implement and monitor policy together. Each actor assumes its role from within its own clearly defined responsibilities. The guiding principle should therefore be ‘functional complementarity’ between the various levels of governance and not the delimitation of competences. *In a multi-level system, such as the EU, the real challenge is establishing clear rules for how competence is shared, not separated.* Thus the underlying rationale is that powers are shared not hierarchically organised.
- Such guarantees would only lead to the freezing of the integrative process and development of the Union and to the dilution of the *acquis communautaire* and renationalisation of vital policies (i.e. CAP, structural policies).

**19. How to ensure that a redefined division of competence does not lead to a creeping expansion of the competence of the Union or to encroachment upon the exclusive areas of competence of the Member States and, where there is provision for this, regions?**

It is a myth to argue that by regulating policy-areas that should belong to lower levels of governments, the European institutions encroach upon the powers of Member States and indirectly sub-national authorities. This is so, because it is the Member States that play a fundamental role both in legislating and implementing EC law. European institutions only take over powers, which are given to them by the member states. As far as qualified majority voting is concerned, it does not fundamentally affect this state of affairs and unanimity still applies to major decisions in sensitive domains.

- However, such a fear could be dealt with by applying **softer forms of law** and **shared policy-making**. This approach focuses on the kind of action the Community could take which would allow other levels of government more room and greater flexibility to develop and articulate the Community policy.
- Furthermore, emphasis on mutual co-operation in the sharing of a common sphere of potential authority and encouragement of the Member States to refrain from acting in any way that would jeopardize Treaty objectives, in the absence of Community action.

The resulting catalogue of competences would have to prove to be sufficiently flexible under the impact of enlargement to accommodate subsequent shifts of authority where necessary to adjust to economic, social and political change.

**20. How are we to ensure at the same time that the European dynamic does not come to a halt?**

- A rigid distribution between compartmentalized competences would not only be unsuitable with respect to concrete policy requirements, it would also create a clear political barrier against the deepening of integration. Instead, the determination of a group of criteria (subsidiarity, proportionality, solidarity) for the use of competences of the Union should be applied so as to assure normalisation amongst Union-member states-peripheries relations.
- The implementation of subsidiarity and the allocation of powers are to be carried out against the background of long-established common policies, such as the four freedoms, central to the *raison d'être* of the Union.
- The delimitation of competences should not adversely affect the legal capacity of the Union to provide a constructive contribution to policy making in any field but rather it should allow for a degree of flexibility in the system (alterable list of competences) so that it could be adjusted in line with the changing needs of European integration.

**21. Should Articles 95 and 308 of the Treaty be reviewed for this purpose in the light of the “acquis jurisprudentiel”?**

No, they should not be reviewed because:

- The above-mentioned articles offer member states the flexibility to act depending on their individual needs and national provisions, but they also ensure that the Union's strategic objectives (i.e. functioning of the internal market, single currency, competition policy) are achieved by adopting a harmonisation and approximation of laws in each member state with those of EC law.

## **II. Simplification of the Union's instruments**

**22. Should a distinction be introduced between legislative and executive measures?**

A visible and transparent distinction should be made between the legislative and executive functions. This reform is necessary because it would:

- Simplify and speed up the decision-making process both at the legislative and the executive levels.
- Clarify the respective responsibilities of both thus allowing greater democratic scrutiny and thus an increase in the democratic accountability and legitimacy of the Union's instruments.
- Improve the quality of the drafting as well as reduce in number and sharpen the focus of the plethora of decisions, recommendations, opinions, guidelines, declarations, resolutions and statements that flow from the Council presidencies.

**23. Should the number of legislative instruments be reduced: directly applicable rules, framework legislation and non-enforceable instruments (opinions, recommendations, open coordination)?**

Since one of the goals is to simplify the decision-making process, the number of legislative instruments could be limited.

- The use of applicable rules (regulations) should be reconsidered in cases with a need for uniform application and legal certainty across the Union. For example, such a legislative instrument is important for the completion of the internal market and has the advantages of avoiding the delays associated with transposition of directives into national legislation.
- Framework legislation should be used where fundamental rights are at stake. European legislation lays down the general principles in an equal and binding way for all sectors, but where Member States specify and implement these policies.

- The framework of co-regulation should also be used, since it combines legislative and regulatory action with actions taken by the actors most concerned, drawing on their practical expertise. The result is wider ownership of the policies in question involving those most affected by implementing rules in their preparation and enforcement.

**24. Is it or is it not desirable to have more frequent recourse to framework legislation, which affords the Member States more room for manoeuvre in achieving policy objectives?**

The framework law establishes the purpose, obligations and conditions of the proposed measure, leaving the implementation to the Commission and its agencies, notably to the Member States.

It is, thus, desirable to have more frequent recourse to framework legislation, except in cases where the Union's vitality is challenged (i.e. when time and/or uniformity are at a premium), for the following reasons:

- Framework legislation allows member states to use less detailed legislation, where appropriate, greater flexibility in implementation and better access to the necessary expertise, thanks to the input from stakeholders, as originally intended by the Treaty.
- Furthermore, local conditions can make it difficult to establish one set of rules that covers the whole of the Union, without tying up the legislation in excessive complexity. There should be more flexibility in the means provided for implementing legislation and programmes with a strong territorial impact, provided the level playing field at the heart of the internal market can be maintained.
- It may also be desirable to have recourse to framework legislation when responding to the charge of excessive rigidity sometimes levelled at certain Community regulations and directives.

**25. For which areas of competence are open coordination and mutual recognition the most appropriate instruments?**

- These instruments should be used for policy areas which are of common concern and where the competency of the Union is wholly subsidiary to that of the member states (where the choice of policies remains a national responsibility) such as social welfare, public health, employment policy, immigration policy, education, culture, etc, and where harmonization of policy at the EU level is particularly low.
- They should be used on a case-by-case basis to achieve defined Treaty objectives. It is a way of encouraging co-operation, the exchange of best practice and agreeing common targets and guidelines for Member States, sometimes backed up by national action plans as in the case of employment and social exclusion, immigration policy and common asylum. It also adds value at a European level where there is little scope for legislative solutions (i.e. national education systems).
- They should also be used in areas where the principle of partnership applies (i.e. regional cohesion), and when legislative action under the Community Method is not possible.
- They should not, however, be used as a pretext for inaction or ill discipline at the Union level in matters that affect the core *aquis communautaire*. It must not dilute the achievement of common objectives in the Treaty or the political responsibilities of the Institutions.

## **26. Is the principle of proportionality to remain the point of departure?**

The principle of proportionality should remain the point of departure.

- The principle of proportionality ensures that from the conception of policy to its implementation, the choice of the level at which action is taken (from EU to local) and the selection of the instruments used must be in proportion to the objectives pursued. This means that before launching an initiative it is essential to check systematically: i) if public action is really necessary, ii) if the European level is the most appropriate one and iii) if the measures chosen are proportionate to those objectives, thus enhancing the efficiency of the Union's instruments and the Union's democratic legitimacy.



**III. More democracy, transparency and efficiency**  
**in the European Union**

**27. How can we increase the democratic legitimacy and transparency of the present institutions (the question is valid for the three institutions)?**

- By determining the criteria (subsidiarity, proportionality, transparency and solidarity) for the best exercise of the competences of the Union and the normality in the relations between the Union, member states and peripheries.
- By maintaining strong institutions that are based on double legitimacy on which the European Union itself is based on: the first one stemming from the member states and the second one stemming from the institutional democratic organs of a federal character that defend and promote the common interest (intergovernmental type of federation of nation states).
- The Council and the Commission must jointly safeguard the governance of the Union on the basis of the guidelines of the European Council, which should concentrate its attention on its essential role as a provider of encouragement and guidance of the interests of the member states, and to employ qualitative majority voting during its decision-making processes.
- Public access to Council documents serving, thus, the principle of transparency.
- The Commission must develop into a strong executive organ (government?) that will promote the common interest of the Union and where the President's role would be enhanced by direct suffrage, increasing, thus, the democratic legitimacy of the Commission and hence of the Union.
- The European Parliament must exercise to its fullest capacity its legislative and fiscal powers in the context of co-decision with the Council.
- Democracy presupposes a clearer structural hierarchy of competences between the different levels of power, which will be based on the principle of subsidiarity.
- By incorporating the Charter of Fundamental Rights in the Treaties and by enhancing citizen information concerning the text of the Charter.

## **28. How can the authority and efficiency of the European Commission be enhanced?**

The authority and efficiency of the European Commission may be enhanced if it is accompanied by greater political legitimization. The election of the President of the European Commission will contribute to the necessary political legitimization of the Commission and will enhance the public confidence and transparency in the political dialogue as well as the general prestige and effectiveness of the European Union.

In an enlarged Union, the role of the Commission becomes all the more important since it is the supranational organ of the Union that defines the long-term political objectives of the Union, safeguarding the respect in European law and promoting the political cohesion of the European member states.

The proposals for a stronger European Commission and President are summarized below:

- The European political parties that participate in the European elections must nominate a candidate for the Presidency position of the Commission.
- The European Parliament through the use of simple majority voting must elect the President of the European Commission and afterwards the European Council must approve the election.
- It is proposed that the candidate President will appoint, autonomously, the College Members. The Treaty must not define the number of Commissioners.
- After approval by the European Council, which will be concluded by enhanced majority voting, the European Parliament must appoint the President and the members of the Commission by simple majority voting.
- Any member of the European Commission must resign after a simple mandate by the President (individual responsibility).
- It is proposed that the European Council must have the right to declare new European elections, if the European Parliament dismisses the European Commission. If this right is to be permanently given to the European Council, it is an issue that should be analysed more thoroughly.
- Concerning the agenda setting of the European Council, the role of the Commission must be enhanced.

- The election of the President of the Commission implies that the European Union will benefit from the enhanced political leadership it will derive from such an establishment and the leaders of the governments will efficiently exercise the Union's competences at a national level.

**29. How should the President of the Commission be appointed: by the European Council, by the European Parliament or should he be directly elected by the citizens?**

The following proposals may be considered:

- Direct election of the President of the Commission by the electoral body (simultaneously with the European Parliament election).
- The election of the members of the Commission by the European Parliament (from a of three-candidate catalogue submitted by the member states or a catalogue submitted by the European Council).

**30. Should the role of the European Parliament be strengthened?**

The European Parliament consists the democratic expression of the EU. Therefore, it must become the central organ of the legislative function of the Union:

- The European Parliament must be given greater legislative and executive powers. Qualified majority voting and co-decision must be extended and the decision-making process must be simplified.
- Greater involvement of the European Parliament in important policies and procedures of the Union, such as the institution of "enhanced cooperation" in the third pillar (after approval by the Council and Parliament).
- The electoral procedure for the members of the European Parliament must be re-examined in order to reduce the democratic deficit present today.

### **31. Should we extend the right of co-decision or not?**

The right of co-decision (article 251 TEU) must be extended:

- In combination with the extension of qualified majority voting in the decision-making process in the context of the general enhancement of the role and powers of the European Parliament.
- The extension of the right of co-decision must serve the need for a stronger European Parliament, reducing thus the democratic deficit and strengthening the democracy.

### **32. Should the way in which we elect the members of the European Parliament be reviewed?**

The members of the European Parliament exercise a decisive role in the shaping of the Union. The electoral procedure and the selection process used for the formation of the Parliament, must serve as best as possible the prestige and effectiveness of the Union. The electoral procedure of the members of the European Parliament must be re-examined, giving greater emphasis on more democratic and direct electoral processes of the members:

- The procedure must allow for the greatest possible approach between voters and their representatives.
- Institution of a single electoral system for the European elections.
- Within the European Parliament there could be members of Parliament directly elected by the European citizens, from catalogues submitted by the European parties.

### **33. Should a European electoral constituency be created, or should constituencies continue to be determined nationally?**

The European electoral constituency can take place simultaneously with the national electoral constituencies thereby assuring the highest level of participation by the European citizens. This will lead to the increase of democratisation, transparency and effectiveness of the Union and to a real development of European civil society.

A single electoral constituency could also be introduced with regional constituent ballots (certain criteria should be considered).

**34. Can the two systems be combined? Should the role of the Council be strengthened?**

The combination of a European electoral constituency with national electoral constituencies may result certain positive outcomes:

- The European electoral constituency can be combined with national electoral constituencies, thereby assuring the highest level of participation by the European citizens. This will lead to the increase of democratisation, transparency and effectiveness of the Union and to a real development of European civil society.
- The role of the Council must be re-examined in order to safeguard the effectiveness, greater coordination and legitimisation of the Union.

**35. Should the Council act in the same manner in its legislative and its executive capacities?**

- The two functions of the Council need to be separated. In the context of its legislative function, the Council must gradually be developed into a second chamber. Generally, the reformation of the structure and function of the Council must be pursued. The Council of General Affairs (CGA) must be divided in i) the Council of General Affairs or Council of European Affairs with coordinating and legislative competences and ii) the Council of Foreign Policy and Relations. The first could take on a more permanent character.
- The **legislative function** of the Council will be exercised by the use of qualified majority voting. The legislative function will be directly linked with the co-decision procedure. Therefore, the European Parliament constitutes the first chamber.
- On the contrary, in the context of its **executive function**, the Council along with the European Parliament will exercise a mere supervisory role of the European Commission, the executive organ of the Union. Therefore, in the context of its executive function, the role of the Council will be limited.

**36. With a view to greater transparency, should the meetings of the Council, at least in its legislative capacity, be public?**

The meetings of the Council in its legislative capacity should be, as a principle, public in order to achieve greater transparency. Only in exceptional cases may the meetings of the Council be closed to the public.

**37. Should citizens have more access to Council documents?**

The notion that the Union constitutes a “union of peoples and of nation states” should be directly reflected in its institutional system. The existent gap between the Council and the citizens must be bridged directly and effectively. More precisely:

- The public must have access to the documents of the Council, as it is done with the European Parliament and Commission documents.
- Access to the documents of the Council will render the citizens dynamic contributors in the integration process.
- Free access to Council documents, promptly and reliably.
- Greater information by the Council to the member states, in an attempt to inform interested citizens (academics, NGO’s, etc).

**38. How, finally, should the balance and reciprocal control between the institutions be ensured?**

For the balance and reciprocal control between the institutions to be ensured:

- Both components must be based on the double legitimacy on which the Union bases itself: that which stems from the member states and the one stemming from the democratic institutional organs of a federal character defending the common interest (federation of nation states type of governance).
- The Commission should be the central core of the system in a triangular hierarchy of balance with the Council and the European Parliament.
- The Council should develop into a second legislative body.
- The Commission apart from its exclusive competences it should also have legislative functions, especially the exclusive right of the exercise of legislative initiative.
- The European Parliament must gain greater legislative and supervisory functions. Qualified majority voting must be extended and the decision-making process must be simplified.
- Greater participation in important policies and procedures of the Union, as during the initiation of “enhanced cooperation” in the third pillar after approval by the Council and the European Parliament.
- Re-examination of the electoral procedure of the members of the European Parliament reducing, thus, the democratic deficit present today.
- Strengthening the democratic principles.



**39. Should national parliaments be represented in a new institution alongside the Council and the European Parliament?**

No, they should not for the following reasons:

- The introduction of such a body would to some extent duplicate the work of the Council - by being the institution representing the Member States it would broadly have the same interests as the Council - and this would threaten not only the European Parliament's institutional position but also the institutional balance required by the EC Treaty and the whole institutional structure of the Community.
- It would render the decision-making process even more complex and difficult, thus leading to increased inefficiency in the decision-making process and would blur the democratic accountability of the Union's instruments.

**40. Should they have a role in areas of European action in which the European Parliament has no competence?**

National parliaments should only be involved in the following areas of European action:

- Greater supervisory powers vis-à-vis their Governments, implying increased capacity to scrutinize the action of their respective governments within the Council and provide views on draft legislation.
- New regulations could be institutionalised for the better and enhanced cooperation between the European Parliament and national parliaments in an attempt to bridge the gap between European and national politics.
- Involvement in the debate about the future development of the European Union and greater exercise of influence and participation in the process of European integration, since they are close to their voters and can thus function as a link between the citizens and the European Union.

**41. Should they focus on the division of competence between Union and Member States, for example through preliminary checking of compliance with the principle of subsidiarity?**

- It would not be wise to institutionalise a preliminary checking of compliance with the principle of subsidiarity by the national parliaments.
- National parliaments usually doubt the precision by which Community legislation is implemented. The participation of national parliaments in the preliminary checking of compliance with the principle of subsidiarity would place the process of policy formation of the Union under great strain and would undermine the role of the European Commission (right of initiative, etc).
- National parliaments provide the greatest guarantees of transparency, in what concerns the information provided by the national governments to their citizens. They have the capacity to convey/transmit the European dimension to the domestic press and public, thus approaching the notion of the European demos. The principle of subsidiarity, in turn, attempts to safeguard and ensure that decisions are taken as near to the citizen as possible.
- COSAK may be reformed.

**42. How can we improve the efficiency of decision-making and the workings of the institutions in a Union of some thirty Member States?**

The effectiveness of the decision-making process and the institutional function of a Europe of thirty member states could be improved:

- With the elaboration of the Constitution or of a Constitutional Treaty for the EU.
- With the institution of a legitimised model of governance of the enlarged Union. With starting point the Community model of organisation for the Union, the effectiveness of the government of an enlarged Union needs to be re-examined and the creation of a “European Polity” and not of a “European supra-state” should be the objective of the Union.
- With democratic enhancement and legitimisation through the *electoral process, the political principles and the institutions of the Union*, based on the notion that the Union is a “union of peoples and states”.
- The decision-making process in an enlarged and supranational European Union must be the result of the mean common denominator convergence of the member states stances and not the minimum common denominator.
- The extension of qualified majority voting will accelerate the decision-making process especially in an enlarged Union, contrary to the right of veto that decelerates the decision-making process and retrogresses the integration process of the Union.
- Through the use of qualitative majority voting, the importance of the European integration as a mechanism guaranteeing a specific model of mutual governance, which does not limit itself on a national level, emerges.

43. **How could the Union set its objectives and priorities more effectively and ensure better implementation?**

The Union could better set her objectives and priorities and ensure their effective implementation, with the following three ways:

- With the institution of specific principles (subsidiarity, proportionality, solidarity, etc) for the determination of objectives and priorities.
- With the elaboration of the governance system of the enlarged Union. With starting point, the Community model of organisation for the Union, the effectiveness of the government of an enlarged Union needs to be re-examined and the creation of a “European Polity” and not of a “European supra-state” should be the objective of the Union. This Polity may co-exist with the nation-state within a *novel federation system*. On this basis, the role of the European Commission, of the European Parliament and of its future organisation (unicameral/bicameral) need to be determined, as well as the position and role of the national parliaments and of national and sub-national units (peripheries, etc), with the objective of safeguarding the cultural and political diversity of the Union.
- With democratic enhancement and legitimisation of the Union, through the *electoral process, political principles and institutions of the Union*. On the basis of the notion that the Union is a “*union of peoples and states*”, we could formulate electoral provisions for the elevation of the President and of the members of the Commission, presumably the President of the Union.

***The central and final objective of the Union must be the democratic organisation of the Union.***

**44. Is there a need for more decisions by qualified majority voting?**

- The extension of qualified majority voting consists a necessary precondition for the increased effectiveness and legitimised decision-making process in the enlarged Union. The objective is that the decision-making process in an enlarged and supranational European Union should be *the result of the mean common denominator convergence of the member states stances and not the minimum common denominator*.
- The qualified majority voting method accelerates the decision-making process especially in an enlarged Union, contrary to the right of veto that decelerates the decision-making process and retrogresses the integration process of the Union.
- Through the use of qualitative majority voting, the importance of the European integration as a mechanism guaranteeing a specific model of mutual governance, which does not limit itself on a national level, is seen.

**45. How is the co-decision procedure between the Council and the European Parliament to be simplified and speeded up?**

Simplification methods must be re-examined for the co-decision procedure. The abolition of the “second reading” would consist a regulation towards the direction of simplification of the conciliatory arrangements.

#### **46. Can the six-monthly rotation of the Presidency of the Union be preserved?**

The preservation of the six-monthly rotation of the Presidency is rendered problematic with the prospect of the enlarged Union to twenty-five (25) or more member states. The abandonment of the six-monthly rotation of the Presidency may be considered under certain conditions. As alternative choices we may consider:

- The institution of Team Presidencies for a greater period of time.
- The election of the President of the European Union who will preside the European Council and the Council of the European Union.
- The appointment of the President of the Council by the governments of the member states for a period of three (3) or five (5) years.
- The delegation of the Presidency to the Secretary of the Council along with its upgrading.

These proposals are related to the general restructuring of the Council. There are, however, important arguments for the preservation of the six-monthly Presidency.

#### **47. What is the future role of the European Parliament?**

The future role of the European Parliament and its future structure (unicameral, bicameral, etc), as well as the position and role of the national parliaments and of the national and sub-national units (peripheries, etc) are of great importance for the democratic legitimisation of the EU. The role of the European Parliament in the integration process can be enhanced in several ways. The European Parliament must, above all, become a 'real' legislator. New institutions (i.e. second body), however, where the national parliaments will be represented at the EU level, should not be created. The role of national parliaments should mainly consist of supervision and control of their governments' behavior in the context of the Union. It is possible, however, to institutionalise new provisions for the enhanced cooperation between national parliaments and the European Parliament.

The legitimisation of the role of the European Parliament must be enhanced, and more precisely the eligibility of the European representatives must be redefined in order to strengthen the relations between the electoral body and the elected representatives. This can be realized with the strengthening of the role of the European parties of the Union, through the creation of a common catalogue of candidate European members of Parliament at a regional level by the European parties.

#### **48. What will be the future role and structure of the various Council formations?**

Concerning the future role and structure of the various Council formations we may consider:

- A clearer delimitation between the executive and legislative powers of the Councils.
- The Council must concentrate on the general dimensions of the policies and allow the special Councils to deal with each policy in depth.
- The representatives of the Councils must answer (by submitting a report) to the European Parliament more often, especially when the latter adopts legislative texts.
- The European Parliament, respectively, must be present when the Councils adopt legislative decisions. Furthermore, both organs jointly must give a press release.
- The formation of a separate Council responsible for the foreign policy of the Union, as well as the mergence of the High Representative of CFSP position with the respective position of the External Relations Commissioner, under the supervision of the Commission, is proposed.

#### **49. How should the coherence of European foreign policy be enhanced?**

Initially, the abolition of the EU structure in three pillars must be considered. Therefore, the CFSP must gradually be merged in the first pillar.

The Union must acquire a legal personality *expressis verbis*. In what concerns the mapping of the Common Foreign Policy, the Council of Ministers and the Commission have the exclusive right to the decision-making process, while the European Parliament's involvement is very limited, complicating thus the mapping of a real foreign policy. However, how is it possible to have a foreign policy without the involvement of the Commission? Is it wise for the Commission to lose its autonomy in this field? What we may consider is to promote greater cooperation between the Commission and the High Representative of the CFSP, without undermining the autonomous role of the Commission.

The development of a common foreign policy and especially the common European defence consist the central factors for the enhancement of the international role of the Union. The common defence must gradually take on the character of a collective security system, based on the principles of solidarity and mutual assistance. The development of the European defence towards this direction will operate complementarily to NATO.

#### **50. How is the synergy between the High Representative and the competent Commissioner to be reinforced?**

- Initially, the role of the High Representative for the CFSP should be delegated to the European Commission (to the Vice-President of the External Relations).
- In an intermediate stage, a tandem may be reached between the High Representative and the Commission.



**51. Should the external representation of the Union in the international fora be further extended?**

The external representation of the Union in the international fora should be extended, especially in the sphere of economic and monetary policy, where the representation of the European Union must be rendered cohesive and effective (G-8, IMF, etc). The Commission is seen as the most suitable and qualified institution to acquire this function and responsibility (without excluding the institution of the High Representative for the EMU).

Additionally, the Union must pursue the acquisition of a permanent seat in the Security Council of the UN.

### **III. Towards a Constitution for European citizens**

## **52. Should the distinction between the Union and the Communities be reviewed?**

The distinction between the Union and the Communities must not only be reviewed but its abolition must be pursued.

The preservation of the present system creates confusion, ambiguity and opacity, so much in the interior and in the exterior of the EU. Independently, however, of the naming of the form (Community/Union), the **Community** is an entity that will be preserved, with the Union as its name.

## **53. What of the division into three pillars?**

There must be a gradual mergence of the three pillars of the Union in a single community pillar, the first pillar, for the following reasons:

- There is a felt distance between the European society and the decisions taken at the European level (Brussels).
- There is also a felt distance among the societies that consist the Union, regardless of the common values, common problems and common objectives.
- We must enhance the collective conscience of our societies, based on the European political values, which consist of a life style that will enhance the feeling of security and of hope and where autonomy, solidarity and participation will be harmonized.  
We must enable citizens to become more involved in the integration progress, a process that concerns them since it is inspired by values and principles that they recognize and adhere to.
- The importance of the European integration must be distinguished as a guarantee mechanism of a specific life style that is worthwhile and which may consist the challenge to the global dominance of the market.

We must shape and promote a society of active citizens at a European scale that will accelerate the formation of a public sphere open to all European citizens. All of the above measures can be best achieved with the adoption of a Constitution.

#### **54. Should a distinction be made between a basic treaty and the other treaty provisions?**

The European Union must introduce a distinction between a basic treaty and the other treaty provisions, in order to enhance the democratic legitimacy of the Union, in other words, the acceptance of the Union by the European citizens and society. During the last years, citizen participation at the European level has greatly diminished, a fact that is seen in the Eurobarometre results, which indicate that a great number of European citizens, if not the majority, do not feel the need to inform themselves of European issues and cannot comprehend the function of the European system.

Therefore, a distinction between a basic treaty and the other treaty provisions would allow the Union:

- To enhance the transparency and the democratisation of its processes.
- To clarify the responsibilities and competences that each authority (member states, governments, institutional European organs, academics, etc) have towards the Union.
- To define the frame for the future policy and institutional structure of the Union.
- To define the limits of the Union's capabilities in the international system.

**However, this distinction should not lead to the dilution of the “Union acquis”.**

#### **55. Should this distinction involve separating the texts?**

The starting point for this procedure seems to be the work of the European University Institute of Florence. The separation of the texts in a “basic” text and a technical text seems to be essential in order for the Treaties/Constitution to become “readable” by the average European citizen.

**56. Could this lead to a distinction between the amendment and ratification procedures for the basic treaty and for the other treaty provisions?**

Based on the reasons for which the separation of the text is essential, the distinction between the amendment and ratification procedures for the basic treaty and for the other treaty provisions seems essential under certain conditions.

The basic provisions (constitutional provisions) must be amended and ratified with a stringent process (unanimity, ratification). The technical provisions could be ratified with a simpler process:

- Unanimity/common accord, without ratification
- Agreement of a partial number of member states (2/3, 4/5, etc).
- Qualified majority voting and joint action by the European Parliament.

**57. Should the Charter of Fundamental Rights be included in the basic treaty and should the European Community accede to the European Convention on Human Rights?**

The Charter of Fundamental Rights must be included in the Treaty/Constitution of Europe, as a legally binding text.

The European Union consists of a “political community of democratic values”, having as its core the peoples, their lives and their personalities. These values must be the central core of the Union. The Charter of Fundamental Rights reaffirms the identity of the political culture of the Union within the wider international system. The democratic values and social principles that are included, determine the social nature of Europe that differentiate it from other continents and countries. For all these reasons, the Charter must be incorporated in the constitutional texts of the Union as a legally binding action.

The embodiment of the Charter in the basic treaty as a legally binding text will consist of the basis for the accession of the European Community in the European Declaration of Human Rights.

**58. Is it possible that this simplification and reorganisation might not lead in the long run to the adoption of a constitutional text in the Union?**

The process of simplification and reorganisation can and must have as a final outcome and objective the adoption of a Constitution/Constitutional Treaty for the European Union. Certainly, the Union will be faced with difficult problems in relation to the structure of the constitutional text without the deterioration of the “Union acquis”.

With the elaboration of a constitutional charter as a factor of legitimacy, the Union will determine the delimitation and distinction of powers and the morphology of the political and institutional system, the necessary democratic balances and the fundamental rights of the citizens and of society in relation to the Union.

**59. What might the basic features of such a constitution be?**

The Constitution must be brief and comprehensible by the average European citizen, in order to have added value. It must embody the values and principles that the Union recognises and adheres to. Additionally, it must define the objectives and purposes of the integrative process.

- The Charter of Fundamental Rights must consist the core of the Constitution.
- The European nationality must be embodied in the constitutional text.

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