

**BEGELEIDENDE NOTA**

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van: het secretariaat

aan: de Conventie

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Betreft: Bijdrage van de heren Josep Borrel, lid van de Conventie, Carlos Carnero en  
Diego López Garrido, plaatsvervangende leden van de Conventie:  
"Een Europese constitutie voor vrede, solidariteit en mensenrechten"

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De secretaris-generaal van de Conventie heeft van de heren Josep Borrel, lid van de Conventie, Carlos Carnero en Diego López Garrido, plaatsvervangende leden van de Conventie, de bijdrage ontvangen die in bijlage dezes staat.

***A EUROPEAN CONSTITUTION  
FOR PEACE, SOLIDARITY AND HUMAN RIGHTS***

***Contribution to the European Convention by the following members thereof:***

***Diego López Garrido, José Borrell and Carlos Carnero.***

September 2002

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**Introduction**  
**EUROPE'S NEW MISSIONS**

*Events such as those of the 11th September, phenomena such as economic globalisation, tragedies like the apparently inevitable spread of AIDS and poverty in Africa, the maltreatment of women and children throughout the world, the impotence of those enforcing the law when faced with international organised crime, the deterioration of the environment as a result of unsustainable levels of growth and the apparently impotent reaction displayed in the recent Earth Summit, the enormous multicultural and multiethnic migratory flows which directly affect the European Continent, international crises on the scale of that in the Balkans or in the Middle East, the demand for universal justice, the economic crisis threatening the countries of Latin America, the fraud scandals in huge multinationals, in short, the problems facing the world at the beginning of the 21<sup>st</sup> century, in addition to other highly significant events which occurred at the end of the last century, such as the fall of the Berlin Wall and the reunification of Germany, all require an urgent answer from Europe.*

*The European Union came into being half a century ago with objectives such as the maintenance of political stability in a shattered, wounded continent, the recovery of the food production capacity and the creation of an open market with no frontiers for the factors of production (goods, services, capital, workers). These objectives have undoubtedly been achieved and even exhausted and new ones are now appearing. One of the most significant is without doubt the enlargement of the Union towards the East which will change its very nature.*

*We must also ensure that this response not only enables us to cope successfully with the challenges and threats described above by means of a model of supranational integration as original as that of the EU, but also to convert the process of globalisation into real benefits for the*

*lives and the security of European citizens: more employment opportunities, a better quality of life, a broader outlook and in short a higher degree of personal realisation.*

*Europe must become:*

- *An area of security, progress, advanced democracy and civil dialogue, which ensures close links between government institutions and the rest of society.*
- *A project for active peace with a foreign policy based on cooperation and human rights.*
- *An instrument of solidarity that transcends frontiers and bridges the gaps between different generations and countries, so making the cohesion of society and the eradication of poverty top priorities.*
- *An economic system aimed at achieving sustainable development.*
- *An area of cultural diversity and tolerance, which seeks to provide education throughout our lives, and to fight against racism and discrimination.*
- *A place where men and women are truly equal.*

*These are the Union's new missions and without them Europe will not be able to influence the course of world events.*

*The soon-to-be-enlarged Europe will represent more than 500 million inhabitants and in the eyes of its citizens (especially the young) it must stop being just another branch of economic globalisation, and start instead to lead the globalisation process on the basis of a model that combines business competitiveness, cooperation and solidarity in a political Union that is firmly established in an ethical framework that reflects and deals with the huge variety of issues affecting European men and women, irrespective of where they were born or where they live.*

*These new missions will effectively bring the European Union to an important crossroads: it can either maintain existing structures, advancing gradually on some of the policies it develops and improving the decision-making procedures without going much further, or alternatively it could create a political will to defend the general interest of Europe, arming itself with more powerful instruments in foreign and home affairs policy and in socioeconomic policy. It must clarify its powers and give the Union's citizens the leading role. In other words, Europe can stay the way it is, which would really imply a step back towards the renationalisation of essential policies (agriculture, cooperation, foreign policy) or it could take a qualitative leap forward in political terms and make a determined bid for a federally orientated Europe that could genuinely be described as a Political Union.*

*We think that the Union cannot continue without defining its missions and its needs, without taking up a position of leadership, without building a strategy and a policy that can have a decisive effect on events. The decision cannot be put off for much longer. Recent elections in European countries have set the alarm bells ringing in terms of the growth of populist, xenophobic and racist movements that with immigration as an excuse are offering the people a Nationalist, anti-European reactionary message with simple, demagogic solutions for problems that are in fact highly complex.*

*This is a unique opportunity for us to move forward towards a politically unified Europe which defends its humanist culture and model of society. This opportunity is offered by the European Convention, which can and must produce far-reaching reforms of the design of the Union, which has so far suffered from the lack of participation of the citizens of our Continent.*

*It is the citizens of Europe, however, who must legitimise any democratic project. The same goes for the European project. For this reason we believe that the proposals for the reform of the Union must be built around the needs and demands of its citizens. The citizens of Europe know that*

*the society of the future will require a supranational political government which can live and work alongside local, regional or state governments. The job of the political parties will be to channel the demands of society, promote debate, propose ideas about the future of Europe and compare and contrast them with those of other political and social groups and with civil society as a whole, in order to decide what we want to do together and how we want to do it. This is the objective of this document, presented to the Convention by the representatives of the Spanish Socialist Party.*



*I*

*THE CITIZENS OF EUROPE*

*Being a citizen of Europe means accepting a shared public space and a political reference with which people can identify.*

*However, the ethical, democratic and civic values of Europe have not played an important part in European politics. Instead, it has been dominated by national interests, different business sectors and a purely economic vision of the world. This has made it difficult for the public to understand how the Union works, and although they see the EU as something positive and they support it, they do not feel sufficiently close to it. There is a similar gap between the established parties and the electorate which is particularly noticeable among young Europeans.*

*A genuine statute of European citizens must be produced by the Convention. A statute which goes beyond the noteworthy but still embryonic version that arose from the Treaty of Maastricht. This will be the sign or the symbol that Europe is transforming itself into a community based on the idea of cohesion, or on a general interest which explains why the citizens of Europe want to build a common project. This stems from the idea of rights and the idea of a Constitution.*

*Proposals:*

- a) A project for a European Constitution must arise from the Convention, in which European citizens can recognise their rights and obligations, their statute of European citizenship. This Constitution would have to be submitted to a referendum before all the peoples of Europe, not only because of the legitimising force provided by a referendum, but also because it would be a decisive step to encourage the people who inhabit this Continent to make a commitment to their future and it would inevitably extend the debate on Europe to society at large.*
- b) The citizens of Europe need a charter setting out their rights and a guarantee of those rights. A Charter of Rights has been approved although it has yet to become a legally*

*binding document. This must become an effective Charter with full binding force, the first chapter of a European Constitution.*

*The Charter is designed in such a way that when it comes into force, it will only have effects with respect to community institutions. However, it should have a wider reach: it should become the minimum standard of protection for all citizens resident in Europe.*

- c) The civil, political and social rights of all those who live in Europe must be guaranteed, through quicker, more direct proceedings before Member State courts, and, at least in terms of unification of doctrine, before the Court of Justice of Luxembourg. This Court should be strengthened and its jurisprudence brought into line with the Court of Human Rights in Strasbourg.*
- d) Formulas for direct democratic participation should be established, such as a the chance for the people to initiate legislation on European policy. Legislative proposals could be put forward to European institutions by citizens from the different Member States. These would be limited to certain issues and would require a minimum number of signatures.*
- The right to vote in local elections and in European Parliament elections should be guaranteed for those nationals from other countries who have been legally resident in the EU for at least five years.

The European Union can only be meaningful if it serves the needs of its citizens, and their desires, and if it is capable of embodying a common interest or general interest which, as Jean Monnet put it, must be the **Afusion of the interests of the people of Europe and not merely an effort to maintain a balance between them all**@. It would therefore not be enough just to give the citizens a Statute, some rights, some obligations. In this historic moment, we must analyse and respond to what society is demanding for Europe. These demands are not only for politicians to act

more effectively or honestly, or for a suitable legal framework within which to put these demands into practice, instead and above all they are a question of commitment and loyalty to the European project, and everything that bestows on it ethical and moral legitimacy, because we are talking about demands that spring directly from the people.

## **II**

### **WHAT EUROPE'S CITIZENS WANT FROM IT**

Since its foundation the European Union's role has been to cover a series of political shortcomings which could only be tackled at a supranational level: agricultural policy, common trading policy, economic freedoms, regional policy and territorial cohesion, in addition to other complementary policies in important fields such as education, culture, the environment, health, communication and international cooperation.

However these policies have not been complemented or completed by more ambitious strategies which offer the Union a greater capacity to intervene in areas of great importance: foreign and defence policy; social and economic policy; Law and Order and the justice system.

The above shows that the demands that society, which European opinion polls show is clearly pro-Europe, is making on the European Union are those which seek to address the problem of the Union's incapacity to respond to the problems of its citizens today. The citizens want Europe to be a leading global political player; they want it to be a place of freedom and well-being which improves people's lives, a shared public domain run by a democratic power.

**1. EUROPE AS A LEADING POLITICAL PLAYER ON THE GLOBAL STAGE:**  
**A UNION FOR PEACE, SOLIDARITY AND HUMAN RIGHTS.**

*The disappearance of the system of opposing power-blocs, the emergence of the United States as the sole hyper-power, and recent events which have made terrorism a universal threat, have changed the criteria on which the defence system of the divided Europe was based. The end of the Soviet Union has caused the United States to be less concerned about the European scene and more worried about threats to its own territory, and this has made NATO less important in American eyes. The present Republican Administration in the United States has been reinforcing the unilateral nature of its foreign policy (boycotting the International Criminal Court and the*

*Kyoto Protocol), in contrast to Europe's multilateral approach.*

*At the same time, since the Maastricht Treaty, the European Union has been moving towards its own foreign and security policy to enable it to intervene in the globalisation process, with the objective of creating a fair, democratic international order. This goal can be achieved with the promotion of human rights, the prevention and resolution of conflicts, the protection of those people affected by them, cooperation for development, the fight against poverty, the promotion of democracy and the strengthening of civil society in developing countries. No European state acting by itself is capable of taking on the new challenges of foreign policy.*

*It is true that the European Union is playing a leading role in the Balkans, and is proving crucial to the region's political, economic and social stability. It has also been involved in the Middle East crisis and in Afghanistan. However, it still has a long way to go before it becomes a regional power.*

*The CFSP (Foreign Policy) and the new ESDP (Defence) are still not credible as common policies. They are still limited and determined by national foreign policies, especially of those countries with a larger military capacity and a veto in the UN.*

*The EU has exercised its influence when it has had a common view, a common purpose, but in a lot of cases its actions have been incoherent and its efforts few and far between. For this reason the European Union which has a defence budget about half the size of the United States but which spends a lot more than the US on international cooperation, is still an institution without an important global presence, light years away from the position occupied by the Americans in the world. This prevents Europe from having sufficient say and influence in multilateral organisations (IMF, G-7), and it makes it difficult for it to bring its weight to bear in international crises, in the*

*running of the global economy, on UN decisions or even on aspects for which it seems to be more prepared such as humanitarian or peace missions, the so-called Petersberg missions.*

**10) Europe as an important world power.**

*The European Union will have the capacity to provide a presence, to intervene and to defend its own general interests as a Continent if it assumes in a constitutional sense the capacity for a common (not single) foreign policy. This means that the CFSP must stop being a second-pillar issue subject to the rule of unanimity, and must become part of the common body of the European Union, under the leadership of the European Council, with decisions to be taken by a qualified majority, subject to the control of the European Parliament and with the executive support and organisational coordination of the Commission and the Council of Ministers through the High Representative. The Commission must have the capacity for initiative in the CFSP, as must the High Representative, but the final decision must lie with the European Council.*

*The National Parliaments must control and influence the actions of their respective governments, in accordance with the provisions of their respective constitutions.*

*In order to improve the democratic supervision of the foreign policy of the EU and its initiatives on defence, the cooperation between the parliamentarians belonging to the foreign affairs and defence committees of the European Parliament and of the National Parliaments must be increased.*

*The foreign policy reforms that the Convention must promote should aim to achieve the following objectives:*



- a) constitutionalise the CFSP as a lasting, democratic, common security policy which addresses the underlying causes of insecurity and goes beyond the traditional military approach to security problems.*
- b) coordinate this policy with the policies on cooperation, trade and migration so as to create a genuine, all-encompassing, joint foreign policy, something which the Union does not have today.*
- c) provide it with sufficient economic resources.*
- d) ensure the EU acts with a single voice in international institutions and with its own legal identity (World Bank, IMF, United Nations institutions).*
- e) combine the diplomatic offices of each country in a single office representing the EU.*
- f) rule that member states may only act alone if their actions are in line with the common European policy or if the EU has no common position. They must inform the European Council of these initiatives.*

**20) Europe as a civil power with a military capacity.**

*The challenge facing Europe at this time is to create a common defence policy and a common defence, with the capacity to respond rapidly to the demands of military and civil crisis management. This common defence system would have at least three main aspects:*

- a) assured collective defence through NATO, within which the European pillar must acquire maximum identity and consistency.*

- b) participation in overseas peace-keeping and crisis management missions.*
- c) when necessary, the defence of the Union itself through the armed forces of each country and a flexible rapid intervention force answerable to the European Council. This would include an industrial policy for European armament.*

*There may be some common defence policy decisions which do not have to be followed by all the members of the European Union (especially the neutral countries), but the essential core of the policy must be agreed in the European Council and put into practice by the Council of Ministers with the collaboration of the European Commission and the different member states. The European Union must therefore be capable of defining all the possible threats to the Union as a whole, a goal which is still a long way off, and it must be able to set a series of objectives, a programme and time periods within which the chosen options must be put into effect.*

*30) Only with a credible foreign policy and military capacity can we provide maximum effectiveness and power to the international cooperation policy of the European Union, and the Human Rights policy which is fundamental to and should be at the heart of all community foreign policy. In a world fraught with poverty, injustice, abuse of power, with vulnerable groups such as women, children, immigrants or refugees, far-reaching solidarity work can only be performed by an important global power such as Europe, which in addition shares the values of solidarity and democracy which provide the credibility and the possibilities for a progressive strategy to combat the contradictions that globalisation cannot resolve.*

## **2. EUROPE AS A PLACE OF FREEDOM AND WELL-BEING.**

*The Union's mission must be to create a Europe with guarantees for social cohesion, social and economic progress, justice and security.*

### **Social and territorial cohesion.**

*Shared citizenship naturally brings with it a policy of cohesion. Cohesion is not only a way of providing help to less-developed areas of the Union, it is also a principle on which the EU and therefore its policies are based. If a policy of cohesion cannot be created this means that the Union has no general interests to pursue or to share.*

*Cohesion must continue to figure in Union treaties as an essential objective of the Union and must be backed with the necessary economic resources. The forthcoming enlargement of the Union means that these resources must be increased so that the new countries can benefit from cohesion without Europe's least developed countries having to bear the cost of enlargement.*

*The increased heterogeneity of a possible 25 member Europe makes the definition of a cohesion strategy even more necessary and a greater effort will be required. If this is not strengthened, the enlargement will fail and millions of European citizens will suffer the consequences.*

*For this reason:*

- a) Social and territorial cohesion must be an essential principle of the European Union and as such must be included in a constitutional document at the highest level.*

- b) The impact of European policies on agriculture, the environment, transport, energy, research, human resources, access to public services, diffusion of technology, equality between men and women etc on the cohesion of the Union must be rethought and reinforced.*
- c) The goals and instruments required for a real policy of polycentric social and territorial cohesion must be redefined.*
- d) The use of the available financial resources before and after 2006 must be redirected towards initiatives directly linked to improving real levels of territorial convergence.*

### **A European Social Model**

*Hand in hand with the above is the need to redirect the process of European construction which has placed all its energies on achieving economic or macroeconomic objectives, and has sidelined social questions to a clearly secondary position. This is undoubtedly one of the main reasons why Europe's citizens feel so distant from the Union, given the scant attention they receive from it in relation to their most immediate needs.*

*Nonetheless it is important to reaffirm our convictions that Europe must act as the guarantor of the Welfare State and of our model of society, and for this reason a European Constitution must treat the European social model as an essential ideological and political point of reference.*

*As Progressives, we must recognise the important advances that have been made (especially in the last decade, when the socialist presence in the governments of the member states has been notable), both within the Social Security system (a system originally limited to employed workers*

*has gradually been extended to include public employees, students, the self-employed) and in the definition of institutional mechanisms (inclusion of employment issues in the main community decision-making centres), and the definition of social rights (from the simple Additional Protocol to the Treaty of Maastricht to their full incorporation into the Treaty of Amsterdam).*

*However these advances barely cover the present needs of a Union that faces the prospect of an important transformation. The profound changes in work, the entry en masse of women into the job market, the aging of the population and immigration into the Union, are all factors which oblige us to modernise our social welfare system, which cannot be approached from the limited perspective of each member state, and which cannot only rely on the actions of political institutions. It requires the joint efforts of European economic and social forces and the creation of specific mechanisms through which this participation must be channelled.*

*We propose that the Convention should consider:*

- a) The consolidation of the European social model of welfare, public service, social equality and solidarity and its financing system in the new constitutional Treaty. Social and economic objectives should be placed on a par.*
- b) The enshrinement within a Charter of Fundamental Rights of legally-binding social rights. This will have a very positive influence on the development of community social policy, not only because of the direct effects of certain rights, such as those of full sexual equality, the right to association or the right to strike, but also because it will allow us to establish mechanisms to enable economic and social players to collaborate fully in the job of modernising the European social welfare system.*

*c) The establishment of a European minimum wage and minimum social standards that guarantee a decent existence, as obligations of the public authorities and rights of the citizens.*

*d) Clear rules that guarantee a healthy balance between market competitiveness and the principles of solidarity, universality, fairness, quality and access to essential public services.*

*Fair access to high quality services of general interest is an intrinsic part of the European social model and plays a strategic role in the achievement of the objectives of solidarity, sustainable social development and regional cohesion. Our economic and social needs are numerous and cannot be satisfied exclusively by market forces (in traditional sectors and in new areas such as telecommunications).*

*e) Give a leading role to full employment and to social policy as a whole (salaries, crisis situations) within the priorities of the Union, correcting the current imbalance in favour of economic and monetary issues, and dispensing with the unanimity rule in the Council which prevents not only the adoption of progressive measures, but often even discussion itself.*

*f) reinforce the role of Trade unions and social representatives, NGOs and citizen's associations in three-party negotiations and in industrial relations;*

*g) broaden the powers of the Union with respect to matters of sexual equality, by including it as a specific heading within the constitutional Treaty; all of this*

*should be done in such a way as to guarantee sexual equality in access to employment, in career promotion, and in salary levels through positive actions that contribute to correct existing inequalities and, in particular, tackle the problem of gender-based violence.*

### **The economic progress of the Union. European taxation policy.**

Today the Economic and Monetary Union is a system based on three elements: an independent central bank (BCE) with exclusive powers over monetary policy within the euro zone; the maintenance of national economic policy for which each Member State is responsible, while complying with certain community laws (especially the Pact for Stability and Growth and the rules of the internal market); and the recognition that national economic policy is a common concern@ which needs to be coordinated by the Council.

In addition, there are certain fields, such as the environment, employment, social affairs and education which are partially subject to open political coordination and which can be grouped together under the general framework of the Lisboa process@, the objective of which is to maintain sustainable economic growth with more and better jobs and improved social cohesion.

But there is as yet no common European economic policy, what we have instead is a mere Acoordination@ of national policies. This is something which cannot easily be sustained in the world's leading trading power (and the leading economic power once enlargement has taken place). In this context, the following proposals can be made to the Convention:

## **11) Economic Policy**

- a)** A constitutional Treaty must include objectives of full employment, sustainable growth and social welfare, and the creation of an internal market to release all the potential of the euro and create an economy that respects services of general interest, develops a knowledge-based society and guarantees fair competition, consumer protection, social cohesion and the coordination of policies in different fields (transport, research and development, taxation, development and regional cohesion, restructuring of industry and state aid programmes).
- b)** The ECB must support EU economic policy with the collaboration of the Commission. The promotion of sustainable growth, full employment and social cohesion are all objectives of the European Central Bank. The ECB must be answerable to the European Parliament and it must be more transparent in its dealings by allowing publication of the minutes of the meetings of the Board of Directors. A consultative committee to the ECB should be set up, made up of all the relevant economic players, including management and Trade Union representatives.
- c)** The European Council, by qualified majority and after a proposal of the European Commission must assume the responsibility for setting out broad binding strategies for economic and social policy in the EU, as a way of establishing real government (or governance) of economic policy. The European Parliament must work intensely in this procedure as must national parliaments, the regions and management and Trade Union representatives.
- d)** The eurogroup must be the unified representation of the euro zone in international institutions.



- e) An economic policy must be developed which goes beyond a budget deficit and allows it to be used in a coordinated way with other instruments to confront unforeseen external shocks.
- f) The definition of the economic policy guidelines within the Euro zone must be linked to monetary, budgetary and structural policies with a medium to long-term view.

## **21) Taxation.**

The EU's new missions and its enlargement process will require a profound transformation of its financial resources system to make it more solid, more stable and more sufficient.

The results of the Feira Council on taxation Aon savings@, after years of discussion are a sign of European impotence on this subject. The deadlines imposed are so long and the precautions so numerous that these agreements cannot solve the problem.

For this reason, the EU should make constitutional provision for the following fiscal priorities, in this order:

- a) the harmonisation of tax thresholds and the establishment of an obligatory minimum rate for income tax and corporation tax in the EU, the promotion of the fight against financial crime and the abolition of tax havens.
- b) the creation of a European tax (without increasing the total tax burden on the taxpayer) to finance the community budget.
- c) the establishment of the rules for a European ecological tax to finance the politics of sustainable development of the Union.

## **Sustainable development**

We support growth based on a responsible and effective use of natural resources which respects the environment and follows production methods that do not harm public health (Kyoto Protocol). The EU's missions and responsibilities must enable us:

- a) to reach a high degree of protection in public health in the Union, while respecting the responsibilities of the Member States in this field.
- b) to guarantee food safety, in particular by ensuring a production process that takes this objective into account.
- c) to rethink European agricultural policy to reconcile it with the need for sustainable development and the fight against hunger and malnutrition because of the serious effects of this policy on the economies of the poorest countries.
- d) to reinforce policies on nuclear safety, promote research and foreign relations, revise and update the Euratom Treaty.

## **Justice**

We see Europe as an area in which civil liberties and security are compatible values which work to strengthen each other.

Questions of justice and home affairs have for a long time been subject to the unanimity rule and have been outside the community sphere of action. They arose only in intergovernmental

discussions and were always subject to long-winded, slow and often secretive procedures without the involvement of the European Parliament, and beyond the effective control of the Court of Luxembourg. This is in spite of the fact that they concern matters of great importance affecting our security (terrorism, organised crime, trafficking of people), civil and criminal justice, the free circulation of people, and of course our Fundamental Rights.

There can be no doubt that the people of Europe want these matters to be organised and decided on from Europe. This desire is shown clearly in the eurobarometer poll released in April 2002. The fight against organised crime and drug-trafficking figured in third place in the list of priorities (behind peace and security and the fight against unemployment) and received the support of almost 9 out of 10 Europeans. A very large majority of those interviewed said that they were in favour of the European Union taking decisions in the fight against terrorism (85%), trafficking in people (80%), the fight against organised crime (72%) and the fight against drugs (71%).

However, it is difficult for Europe to combat effectively the trafficking of people, drug-trafficking, money laundering, corruption, terrorism, arms dealing, all crimes which fall heaviest on the weakest members of society.

As a result, we propose:

- a) In the European Union today where there are practically no internal frontiers, the Aarea of freedom, security and justice@ enshrined in the Treaty of Amsterdam must become a European affair governed by community methods, i.e. with an open, public discussion, decisions taken by a qualified majority, through the established European bodies and with control by the Court of Justice and the disappearance of the Third Pillar.

- b) In accordance with the above, the legislative power on these matters should lie with the European institutions.
- c) The justice and policing system should remain basically in the hands of the States, but with a formula for cooperation and coordination on judicial matters through Eurojust and on police matters through Europol. A challenge for the future will be to set up a European Border Police. Eurojust and Europol must act under the control of the European Parliament and the Chamber of the States and the supervision of the Commission.
- d) Mutual recognition of civil and criminal sentences, the disappearance of extradition, and the putting into practice of a European arrest warrant. The coming together of the different national criminal legislations.
- e) The creation of a European Prosecutor, whose role would not only be to defend the financial interests of the Community, but also to coordinate and promote the prosecution of crimes committed at a supranational level which require collaboration between different member States.
- f) A European immigration and asylum policy that guarantees the common, balanced management of migratory flows and of external frontiers so as to create legal ways of reception and integration of citizens from other countries. This must include the basic list of rights and obligations for immigrants in the European Union and the Statute of long-term residents and refugees. If we want to prevent racism and xenophobia from spreading, we cannot treat immigration as just a question of security.

### 3. EUROPE AS A DEMOCRATIC POWER

For a long time it has been said that the EU suffers from a democratic deficit. Europe will not be able to become an important world power capable of providing welfare, sustainable growth, security and cohesion, if its institutions do not have democratic credibility, transparency, legitimisation from the people and solid legal/constitutional foundations. Without these prerequisites, there is no point in defining objectives or missions.

A supranational power must be a democracy which can be recognised and valued by the citizens. All democracies have two essential pillars: some rights and obligations that constitute the Citizens' Statute and some authorities elected freely and democratically which are organised on the basis of the principle of the division of powers. The European Union today lacks to a large extent, although not completely, these two elements. There is no legally-binding Charter of Rights and there is no division of powers to guide the institutional structure of the community, which is confusing and lacks transparency. Neither is there a Statute of European parties, which we need to create, nor do the EU institutions inform European public opinion of their work.

The above helps to explain our apparent lack of interest in Europe, our lack of a European identity and the lack of public participation in the EU.

We propose an institutional structure for the EU which converts it into a Federation of States based on the principle of the division of powers, which goes beyond the controversial dichotomy between Acommunity@ or Aintergovernmental@ methods to a fully European political system made up of the following institutions:

## **THE EXECUTIVE**

### **The European Council**

This is made up of the European Heads of Government. It defines and promotes the work of the Union in a political sense and approves its broad policy guidelines, which are then put into practice by the Council of Ministers or the Commission, and developed through the relevant European legislation.

Once the Apillar@ structure has disappeared, as we are proposing, the European Council should take its decisions (those of a non-constitutional nature) by qualified majority voting (or very qualified), even when dealing with those matters which have so far been part of the second or third pillar of the Union structure, i.e. foreign policy, common security policy, defence policy and matters of Law and Order. The same goes for another important faculty: the approval of broad guidelines for European economic policy (not just the coordination of national policies). If the decisions of the European Council had always to be unanimous there would never be an EU foreign or defence policy. In the latter case (defence) a country could be allowed not to participate in certain military operations.

The European Council could be headed by a President elected by the European Council who would coordinate its activities, be a visible symbol of EU power abroad and enable effective control of the Council by the PE and the Chamber of States. The mandate of the President would be half a legislature, and he/she could be re-elected only once. In any case his/her function would be to maintain the general equilibrium between Member States of different sizes and between the institutions.

The European Council would therefore become a sort of Acollective Head of State@ of the Union, with representative capacity, and also with the capacity for initiative and political decision-making. It would be subject to the control of the Chambers of the European Parliament. The European Council, through its President would have the power to sign international Treaties, the European Parliament and the Chamber of States the power to ratify them and the European Commission to negotiate them.

### **The Council of Ministers**

This body prepares the meetings of the European Council and executes its decisions in collaboration with the Commission, especially on matters which, because they touch on questions of sovereignty, are currently situated on the second and third pillars (CFSP, Defence, Justice and Home Affairs). We would have to add EU economic policy to this list.

There should be only three Councils of Ministers: General Affairs (made up of Vicepresidents or Ministers for Europe), Foreign and Defence Policy (Foreign Ministers and/or Defence Ministers) and ECOFIN (Ministers of the Economy).

The Council will have to take its decisions by qualified majority vote (double majority of States and of population).

### **The Commission**

The Commission is the power which represents the general interests of the Union. If the European Council approves the broad policy guidelines, the European Commission, as the Government of the Union, will put these policies into effect through either executive actions (within

the framework established by law) or through a legislative initiative, a power over which it will retain exclusive rights.

In its executive facet, and in particular on matters of foreign policy, defence, justice, home affairs and economic policy, the Commission must coordinate with the Councils of Ministers and attend their meetings.

In addition, the Commission will implement the current common policies of the Union and will act as guardian of the Treaties. It must therefore retain the legal right to appeal to the Court of Justice in Luxembourg.

The Commission will also be responsible for the Administration of the European Union.

The Commission will ensure decentralised and coordinated implementation of common policies, through the different Governments and Administrations (central and regional). The system of Acomitology@ should be ended and replaced by the full responsibility of the Commission in those policies it implements directly, although it must always work in coordination with Governments and under the control of the European Parliament.

The Commission must answer politically to the European Parliament. The Parliament must be responsible for appointing the President of the Commission, who, in turn must appoint its members. Once the community government had been selected and formed, it would be subjected to a process of investiture by the European Parliament, which could censure the President of the Commission with a motion of constructive censure.

The President of the Commission would have a mandate for one single legislature and he/she



could not be re-elected after the next elections to the European parliament.

## **THE LEGISLATURE**

### **The European Parliament**

This is the Union's real parliamentary institution. It is elected by European citizens, in elections in which supranational states must be promoted by setting aside a certain amount of the seats to them.

The European Parliament must have the capacity to appoint, control and censure the President of the Commission, and the Commission itself, and intervene as the co-legislator in all Union laws.

The EP must be consulted (and must control the European Council) on all decisions relating to the CFSP or the ESDP, on matters of Justice and Home Affairs, and in relation to economic policy guidelines.

The EP must approve the appointment of European authorities of constitutional importance and elect the European Ombudsman.

### **The Chamber of the States.**

This is the other parliamentary institution. It has the same powers as the EP, except for the appointment, control and censure of the Commission, which must be the exclusive competence of the European Parliament, as must the appointment of the European Ombudsman.

We believe that the European legislative body must have a bicameral structure, which represents the double federal legitimacy of the European institutions: in the first chamber the legitimacy springs from the electorate as citizens of Europe and in the other as citizens of a particular Member State.

This is what we refer to as the Chamber of the States, or Second Chamber, which would absorb what have so far been the functions of the Council in its legislative role. For this reason, we propose that the members of the Chamber of States be designated by the governments, taking into consideration in the allocation of seats, the number of inhabitants of each one of the Member States. Nonetheless, we are open to other ideas on the composition of the Second Chamber that may improve and/or widen the representation of the Member States which are fundamental players in the construction of Europe. In the same way, the representation of federal or similar types of States should include representatives of the Regional Governments or Autonomous Communities which go to make up the State.

The decisions in the Chamber of States will be taken by absolute majority voting, in such a way that this majority also represents a majority of the citizens of the Union.

The second representative chamber in the Member States will exercise control over the decisions of the European Council on matters that affect the sovereignty of the States, in particular on foreign affairs and defence policy and on questions relating to justice and home affairs.

The Chamber of the States will also have a role to play in terms of political control over the principle of subsidiarity.

## **National Parliaments.**

The power of national Parliaments must be reinforced, so that they can carry out a preliminary review of the European policies of their respective governments.

The cooperation between the National Parliaments and the European Parliament on all political aspects of the Union must also be strengthened by means of a framework agreement between them.

The National Parliaments can perform the task of political control over the principle of subsidiarity, although without decision-making capacity and without it being necessary to create another ad hoc organ.

## **THE JUDICIARY**

### **The Court of Luxembourg**

The Court of Justice (and that of First Instance) of the European Union must retain its current competences which will be increased to include two very significant elements: as the guarantor of the rights established in the Charter, and as a Court of Last Resort that resolves disputes between the Union and the States by applying the principles of subsidiarity and proportionality. In this way the Court of Justice will become a real Constitutional Court of the Union.

In accordance with this role as the supreme guarantor of a uniform interpretation of the Constitutional Law of the Union, it would be a logical step to accompany the Court of Justice and

the Court of First Instance with a genuine European judiciary as an inherent part of the institutional development of the constitutional construction of Europe.

### **Member State Courts**

At present the Courts of the Member States apply Community Law and they will continue to do so. In addition, this new stage of the European Union must be a period of close cooperation between the Courts of the different member States who must act as if they were part of an integrated judicial system. The Court of Luxembourg will be the highest unifying body of the jurisprudence of community law.

### **THE REGIONS AND LOCAL GOVERNMENT IN THE EUROPEAN UNION**

A European Union with 500 million citizens must be governed with the participation of regional and local institutions.

Regionalism and the defence and promotion of different social and cultural identities are advancing throughout the world. At the same time, cities as an expression of our coexistence and as the first level of social organisation, of participation and of politics are becoming more important and more citizens are getting involved in them.

The necessary enlarged role of the cities and regions of the renewed European Union also arises from the express recognition of the principle of subsidiarity and, in short, from the need to respond to the current problem of democratic deficit in the EU with a greater involvement of the tiers of political participation that are closest to Europeans.

This is the road we must take if we want to achieve greater democratic legitimacy and ensure that decisions are taken as closely as possible to the citizens as set out in the Declaration of Amsterdam.

The fact that the enlargement of the Union will include a number of small states reinforces even more the need for the regions to be present in the community (without this affecting the constitutional systems of each country) and the strengthening of local autonomy as a principle that is deeply-rooted in European political tradition.

To this end, it will be necessary to strengthen the role and the workings of the Committee of the Regions so that it acquires the real status of an EU institution. The Committee must have the capacity to present appeals to the Court of Luxembourg in defence of the principles of proportionality and subsidiarity, and this must be extended to all regions with legislative powers. Our proposal is clear: to strengthen the existing Committee of the Regions and gradually give it more functions and promote its relationship with the European Parliament.

In addition, the regions, and when applicable local councils, must take part in the preparation and in the implementation of community legislation. This role is essential in those matters which affect the powers of the regions with legislative powers.

## **THE EU BUDGET**

The European Union needs a budget which can cover the responsibilities it will soon be taking on.

The union's present resources, as set out in Agenda 2000 (i.e. a maximum of 1.27% of community GNP), could turn out to be insufficient. They should be adapted in line with the competences that the union will be taking on, without setting strict maximum thresholds.

The reform of the present system is aimed at guaranteeing the financial autonomy of the Union, by applying the principles of efficiency, equity and transparency.

We believe that it is essential that the European Convention propose changes to the EU budget along these lines:

- a)** Establish the principle of sufficiency of income for the EU so that it may achieve its political objectives.
- b)** Consolidate the Financial Prospects in the Treaty as a real medium-term plan.

Since 1988 there has been a non-compulsory Inter-institutional Agreement which was mentioned in article 161 of the Treaty of Nice and must be consolidated in the future treaty as a genuine medium-term financial plan governed by the Union's legislative procedures. This would help to increase efficiency and improve stability. The system should allow for a sufficient degree of flexibility.
- c)** Create a fully unified budget:

  - remove the distinction between Obligatory Costs and Non-Obligatory Costs,
  - Include the European Development Fund (EDF) in the Budget,
  - Ensure a more complete integration of peripheral institutions (such as the European Central Bank, the European Investment Bank, decentralised branches and agencies) in the EU Budget.

**d)** Democratise the budget procedure fully.

To achieve this, it would be necessary to extend the legislative procedure to approve the budget to the Whole of the Budget, Equity and the Financial Prospects.

### **DEMOCRACY OF PARITY**

European democracy must be democracy of parity in which men and women have the same rights and duties, and form a part, under the same conditions, of each one of the bodies that guarantee the democratic co-existence of the Union.

### **III**

## **THE EUROPEAN CONSTITUTION**



Throughout history a Constitution has been the expression of a basic consensus, the social contract of the people. For this reason the grand legal instrument required to make Europe move in the direction we have been describing is a Constitution, in which the citizens of Europe come together in a common project.

The European Constitution should have the following characteristics:

11. It should be a single, straightforward and, as far as possible, short text which sets up a Federation of States and European peoples.
21. It should be approved in a Constitutional Treaty (at state level) and then subjected to referendum (at citizen level), with structures that prevent one country from blocking the Union as a whole (for example by setting out that it will come into force when it has been approved and ratified by a minimum number of States who represent a majority of citizens).

It could be reformed by means of a Convention similar to this one.

31. The Constitution would have a classical structure and contents: The Principles and Objectives of the Union, Fundamental Rights (Charter), Competences of the Union, Institutions and Sources of European Law, and a part which we could call the Economic Constitution.
41. The Charter of Rights sets up a system of equal rights and obligations for all citizens from which all forms of sovereignty originate.

The Charter must be legally binding for all European or national institutions that approve or apply EU regulations or decisions.

European citizens may appeal to the courts to guarantee the rights set out in the Charter and to the European Ombudsman.

- 51.** The horizontal division of powers helps to distribute the competences between the different EU institutions.

The exercise of the powers of these institutions must be subject to the principle of loyalty to the EU and its institutions. The same principle applies to Member States and their institutions, which may not attack the objectives of the Union or the European general interest as established by its institutions.

- 61.** The vertical division of powers distributes competences between the Union and the States avoiding backward steps where powers revert to national governments.

The EU may only exercise a certain power when it has been granted to it in a Treaty.

The EU's competences (at all territorial levels) will include subsidiarity and proportionality, legal control of which must be carried out by the EU Court of Justice. Political control will be the responsibility of EU institutions with the participation (without decision-making capacity) of the National Parliaments.

The competences of the EU will be exclusive or shared with the States (maintaining in any case the current situation), but it would not be a good idea to present a closed list of powers that would prevent development in the future on the basis of new

responsibilities taken on by the Union. This leads to the need to maintain article 308 of the EU Treaty which permits the Council to take the necessary steps to achieve an EU objective.

**71.** The Constitution must have a higher status than all other European laws.

Existing treaties must be merged together, simplified and converted into European Organisational Laws, which will be subject to ratification by the National Parliaments.

On the next tier down from these Organisational laws will be European Laws passed by the EU's legislative chambers.

These laws will be developed with Regulations, Directives or Decisions of the European Commission or by state orders.

**81.** Community Law will have direct effects and priority over state or regional laws, and disputes over competence will be heard in the EU Court of Justice.

**91.** The Athree-pillar@ structure will disappear. The EU must have a single legal identity, and special statutes for specific countries, or AEurope à la carte@ must be avoided.

**101.** All the Constitutions of the Member States must be adapted and brought into line with the European Constitution.

## **The Institutional Structure of the European Union**

### **Executive**

#### **European Council**

#### **Council of Ministers**

- General Affairs
- Foreign and Defence  
Policy
- ECOFIN

### **Legislature**

#### **European Parliament**

#### **Chamber of the States**

### **Judiciary**

#### **Court of Justice**

#### **National Courts**

### **European Commission**

### **Regions and Local Authorities**

- Committee of the Regions
- Legitimacy to appeal to the Court of Justice.
- Participation in the implementation of community legislation.