

CONVENÇÃO EUROPEIA

SECRETARIADO

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de: Secretariado**para:** Convenção

Assunto: Contributo de Ana Palacio, membro suplente da Convenção
– "Debate sobre o futuro da Europa"

O Secretário-Geral da Convenção recebeu de Ana Palacio, membro suplente da Convenção, o contributo que figura em anexo.

INTRODUCTION: MORE EUROPE, A BETTER EUROPE

In saying that there should be “More Europe”, we are underlining our firm intention for Europe to acquire its rightful importance and place in international relations. The success of the European project, which in its beginnings was already a response to growing internationalisation, is now a necessary condition for dealing with the complex political, economic, and social challenges brought on by globalisation.

The way to achieve the “More Europe” target is through two complementary paths: expansion and integration. At the current junction, the European Union has decidedly chosen to undertake an exceptionally large expansion, essential if we are to restore an identity eroded by the distance between Central and Eastern Europe, and States as a consequence of the artificial division that ensued from World War II. This enlargement to 25 Member States, which fully responds to the yearning for European unity, will test the true solidarity among the peoples of a same civilization, and will give the European Union the continental dimension it needs to assert itself in a competitive and globalised world. And if the Union is now able to successfully face such challenge, it is precisely due to the satisfactory completion of the latest reforms, because of the progress achieved by the integration process in recent years.

We also seek a better Europe. We know that economic development and social justice go hand-in-hand. We know that the best way to fight against social exclusion, to increase the self-esteem of people, and to raise their level of participation in society is to create jobs. We know that the clarity of these principles made it possible to chart, 18 months ago in Lisbon, “a new course for Member States: to build a European knowledge economy, with a highly-qualified workforce and with social policies aimed at job creation.” In short, more Europe and a better Europe.

I. A FAR-REACHING REFORM

The upcoming enlargement, bigger and more difficult than prior ones, demands a profound reform of the European Union. The candidate countries have made efforts to transform themselves into democratic States under the rule of law, and to adapt their structures to the requirements of market economy. The Union, in turn, has tried to respond by adjusting to the reality of a Europe with 25 or more members.

The integration process has been accelerated over the past few years so that we can become more European and so that we can have more Europe. The success of the euro's introduction into circulation, the advances made in the construction of the Area of Freedom, Security and Justice, the launching of a European defence policy and the promotion of economic and social modernization, are steps towards the target of a Europe that is not only bigger, but also more integrated.

Such successes are precisely what allows us to take on more ambitious goals. The new internal and external settings where Europe building must continue to advance, and in particular, the need to redefine the role of Europe and of Europeans in a changed world, demand a new framework with the appropriate size and with the appropriate content, structure and means to ensure its effectiveness.

At Nice, Heads of State and Government proposed this target, as well as that of making the Institutions of the enlarged Union more representative. At Laeken, convinced that this new era demanded a new method for reforming the Union's legal and institutional foundations, they set up a Convention that, following the model used when drafting the European Charter of Fundamental Rights, is to prepare, in a way that ensures maximum participation and transparency, the upcoming Intergovernmental Conference, which is to adopt the reform agreement.

The process should be completed with the ratification by national Parliaments. The importance of this decisive step for the future of Europe, however, makes it advisable to clear up any doubts regarding its support by the people, and we therefore propose that the resulting instrument that embodies the reform be submitted to a referendum, which could be held at the same time as the next European election.

We firmly believe that the Convention, composed of prominent figures from Member States and candidate countries, who also represent the different legitimate authorities that coexist in the Union, is living up to Europeans' expectations, and is focusing on matters that reflect the real concern of the people.

The receptiveness of the Convention with regard to society's demands, expressed through different national debates and in the European public forum, among other channels, has enhanced its capability to rise to the task that has been entrusted to it, and to set out proposals that are as

ambitious as they are realistic.

Such a widely participative system, however, makes it inevitable that there would be an accumulation of contributions with a wide diversity of orientations, on the basis of which amendments – often contradictory ones -- have been formulated. The consensus reached on certain matters does not preclude the persistence of differences of opinion regarding many others, which is why it seems appropriate that the People's Party should now be expressing the ideas that define its position with respect to the Convention's debates, at a time when the articles of the proposed European Constitutional Treaty are beginning to take shape.

II. THE CONTINUING VALIDITY OF THE EUROPE-BUILDING MODEL:

THE COMMUNITY METHOD

At no other time in the history of European integration have we been faced with so many challenges of such a far-reaching nature all at the same time. Whatever necessary decisions we make for the future should in no case undermine the consolidation of everything that we have painstakingly achieved until now or change the essence of a method of progressive integration the effectiveness of which has been shown.

This is why we wish to reaffirm the validity of the foundational principles that sustain Europe-building, and which have made it possible to achieve decisive progress over the past few years towards political union and the establishment of effective ways of cooperating in the areas of social policy, employment, asylum, immigration, law enforcement and justice. These are the advances that strengthen the Union having the way for enlargement.

The continuing validity of this model, which consists of advancing, consolidating such advances, and then preparing the subsequent steps to continue advancing, should not be affected by the fact that we are now taking a longer, more far-reaching step. Neither should it be affected by the fact that we are facing the challenge of delving into areas that more directly affect the core sovereignty of the States. A more integrated European Union must continue to be a union of Nation-States -- each having a distinct personality and each conserving its own identity and sovereignty – that have found an original formula, based on subjection to a common Law with direct effects on their citizens, and with primacy over internal legislative arrangements, based on the creation of common institutions; and based on the development of common policies that make it possible to achieve

greater security and increased well-being for their citizens.

The ability to continue to successfully advance in European integration depends on maintaining this specific form of union. Let us therefore preserve the flexible system, inherent in the dynamic conception of Europe building and focused on the achievement of common aims and objectives, that has made it possible to make continued progress.

III. REAFFIRMATION OF THE UNION'S FOUNDATIONAL PRINCIPLES

The Union's legitimacy is based on two foundational principles: that of being a union of States, a fact that has its institutional embodiment in the Council, and at the same time, being a union of citizens, represented in the European Parliament. This two-fold democratic legitimacy must continue to be the basis of the institutional structure of the new Europe; one that aims not to replace the States, but rather to complement them by providing organization to their union, without compromising their diversity and the respect for their citizens' roots.

Nevertheless, this is not enough to advance in the Europe-building process. Citizens do not only want to be adequately represented, but also demand that the Union be legitimised as well through the proper exercise of the authority entrusted to it, and by providing real solutions to their problems. That is to say, citizens, in order to accept the yielding of more sovereignty, simply ask that the Union be effective. In short, the point is to acquire the legitimacy conferred by effectiveness, and for the reform to be able to balance it with the necessary democratic control.

The Union is and ought to be a voluntarily established organization of integration that complements Member States, refraining from intervening in matters that are the exclusive province of national laws and regulations, such as the internal articulation of the distribution of power among the territorial entities and institutions of a Member State, which should be regulated by the constitutional provisions of each State.

The Union's future institutional scheme must respect the basic checks and balances of the "institutional system", as well as preserve the essential characteristics of the current "Community method". These requirements are incompatible with a traditional separation of powers such as that

existing in the Member States.

The identifying characteristics of the Union are its fundamental rights and democracy. The current Article 6 of the Treaty establishes its basic principles to be freedom and democracy, respect for human rights and fundamental liberties, and the rule of law. The same article sets forth that the Union shall respect fundamental rights as guaranteed by the Rome Convention and the common constitutional traditions of the Member States.

In line with this spirit and in a manifestation of the fact that the European Union is not just a common market, the European Charter of Fundamental Rights was adopted in December 2000 in Nice. We want to include this charter in the future Constitutional Treaty, with full legal effects, enabling the Union to eventually join the Rome Convention for the Protection of Human Rights and Fundamental Freedoms.

IV. AREAS AND MODES OF ACTION OF THE UNION

IV.I A 21st-century internal market

Should we shift our gaze from its foundations and look at the areas and modes of action of the Union, we would see that over the past ten years, a great deal of progress has been made in the removal of barriers that hinder the smooth operation of the internal market. Nevertheless important targets are yet to be achieved, some of which are even more essential in the wake of the introduction of the single currency, such as creating a true market for financial services or adapting the policy of defending against competition to the realities of a “globalised” world.

In order to achieve full freedom of movement, it is necessary to break down other barriers as well, such as those that hamper the mobility of educational systems, the labour market, the energy market, services and, as a necessary instrument, transport –still woefully deficient— i.e. trans-European networks. Also involving the internal market is the need to achieve free movement for final court verdicts, an area in which other facets, to be discussed below, predominate.

Furthermore, there are new citizenry demands to be met, such as food safety, transport safety or improved energy efficiency, which also implies environmental efficiency, not to mention

others that, while apparently minor, have an undeniable impact on people's everyday lives. Some examples are the bureaucratic hurdles that still exist for the recognition and equivalence of foreign degrees and studies, or the requirement that cars acquired in one Member State of the European Union have to pass through a new technical inspection, just to be registered in another.

A key aspect in the construction of an internal market is the possibility of adopting measures regarding the approximation of Member States legislations on the establishment and operation of such a market. This possibility must not be diminished by possible excesses in defending the principle of subsidiarity, which have the effect of maintaining barriers within the internal market in order to benefit specific political and economic interests, rather than the general interest.

IV.II Economic governance and social policy.

Economic governance and social policy continue to form part of an inseparable block. We believe that monetary policy should continue to be the exclusive competence of the European Central bank, while economic and fiscal policy should be the responsibility of the Member States, which have to make an effort to improve their coordination, in order to deal with possible asymmetrical crises and to avoid unilateral policies as much as possible.

In this regard, the absolute need to maintain budgetary stability must be reaffirmed, along with the limitation of public deficits to a maximum of 3% of GDP, as established in the Stability and Growth Pact. Those who talk about supposed rigidities are well aware of the need for the Pact and of the fact that any credible alternative would have to impose taxation and budgetary policy limits on Member States. It does not seem to be appropriate, however, to include in the future Treaty the stipulations of the Pact, as they are of a legislative rather than constitutional nature.

It is indispensable that the States of the euro zone be able to decide their economic and budgetary policies with full autonomy. The euro group must maintain its informal nature as a forum for dialogue among Member States, the European Commission and the ECB. Furthermore, we propose that there be a wider set of circumstances in which voting within the Council is restricted to Member States that participate in the single currency.

Economic policy and social policy must be geared in a coordinated manner towards the achievement of their shared basic target: full employment. Social policy goals must be incorporated

into economic policy, the principal guidelines of which constitute the central coordination tool.

IV.III Political will for a common foreign, security and defence policy: an EU committed to international facts.

Europe's citizens hope that the Union will continue following these lines of action, but they would feel frustrated if we were not able to give an appropriate response to the new specific demands that they set out. In particular, there are two areas in which we peremptorily need more Europe: the area of the Union's external actions and that of internal security.

Even though Europe's international role has grown significantly over the past few years, it is evident that its presence on the world stage is still too weak, as it was sadly demonstrated in the Iraq crisis. The existing structures of the Union proved to be insufficient, but it would be naive to think that the planned institutional changes would be enough to correct such situation, if they are not joined by the necessary political will. The Convention's work must include proposing new structures and procedures that encourage and allow the effective development of such political will.

To this end, it is necessary first of all to better define in the future Treaty the objectives, interests and principles of external action of the Union's. Secondly, the logic of the decisions adopted at the European Council of Seville must be carried to their ultimate consequences, by separating the existing General Affairs and Foreign Relations Council into two distinct entities. Thirdly, the requirement of a qualified majority should be the general rule for the adoption of decisions, tempered by mechanisms such as the emergency brake or constructive abstention, so that no Member State will be left in the minority in matters that affect its vital interests or be obliged to participate in operations against its will.

There must be greater coordination and consistency in external action, which would require creating a position analogous to that of a minister of foreign affairs of the Union, who could be designated through a qualified majority by the European Council with the agreement of the President of the Commission.

Consistent external action requires a foreign affairs service that covers all spheres of action of the Union and is at the service of all its institutions. With the prospect of a Union with international legal personality, the delegations of the Commission should be converted into delegations of the Union, including Union officials and commissioned personnel of national foreign affairs services.

Mechanisms to allow adequate coordination and cooperation between the foreign service of the Union and the diplomatic service of Member States should be created and strengthened in order to achieve the establishment of a common European diplomacy. A Common Diplomacy School could contribute to the development of a complementary training programme that emphasise shared values and principles in order to achieve a European strategic and administrative mind.

We also need more Europe in defence. The new challenges and threats that we face have brought to the fore the need to create a common security system based on the principle of solidarity among Member States. It must be made clear that external security and defence policy goes beyond Petersberg tasks and the objectives of such policy must explicitly include the fight against terrorism and against the threats posed by mass destruction weapons. This is an extremely sensitive area where particular positions of certain Member States request discussion on the advisability of reinforced cooperation schemes. We therefore propose to extend the scope of defence to include this mechanism, which would also make it possible to attain two important targets: making it possible for Brussels Treaty Member States (WEU) to transfer their mutual defence commitments to the Union, and making feasible the creation of a European Armament Agency.

IV.IV Area of freedom, security and justice: greater EU commitment to the fight for freedom and against terrorism.

There are few other European debates that elicit more interest among the citizenry –thus making it one of the major challenges of the Convention—than that aimed at articulating proposals able to transform Europe into a true area of freedom, security and justice, based on the concept of European public order. In particular, terrorism constitutes the biggest threat to the values on which the European Union is built, which is why the fight against this scourge has to be target number one.

In the relevant legislative process, the application of codecision and qualified majority voting should be given primacy, with greater involvement by national parliaments, and with the Commission and Member States sharing the right of initiative in certain cases.

The goal of creating a common policy in immigration matters needs to have an explicit legal basis in the future Treaty, although it should be ensured that Member States have sufficient room for manoeuvre to manage their migratory flows. We must insist on the recognition of shared responsibility in the effective management of external borders through a common integrated control

system. This principle of shared responsibility should be extended to third countries, which are partners of the Union, by including a clause on cooperation in immigration matters in the partnership agreements.

With respect to judicial cooperation in civil and business matters, we want the Treaty to specify the objectives, preventing the incompatibility or complexity of Member States judicial and administrative systems from keeping citizens from exercising their rights and opening up channels for the cooperation needed for the development of the rights and freedoms recognized in the Treaty's framework.

The mutual recognition of court decisions must be enshrined in the future Treaty as a constitutional principle, based on the principle of the equivalence of Member States judicial and jurisdictional systems.

In the operational sphere, the development of police and judicial cooperation should be stepped up by vesting greater competence and responsibilities on Europol and Eurojust, their coordination being be strengthened.

All of these proposal can become reality only if Member States take responsibility for their adequate implementation and if we strengthen the legal unity of the Union by expanding the supervision authority of the Commission and the jurisdiction of the Court of Justice.

V. A CONSTITUTION FOR EUROPE'S CITIZENS

The acceleration of the Europe-building process has made it possible for individual citizens to feel the presence of the Union in their daily lives, and to stop thinking of Europe merely as a common market. Citizens are showing increasing interest in decisions adopted in the Union, while they want its political dimension expanded. The reform cannot ignore this fact, which we can consider to be a new development.

In its task to clarify its competencies, the Convention should seek to have the Union concentrate its actions in those areas where it offers true added value with respect to those of the Member States, and where the latter cannot effectively meet their citizens' demands.

The Committee of the Regions is called play a preponderant role in the Union's everyday life in the association of regional and local powers. To this end, its participation in the legislative process should be strengthened and its right to appeal to the Court of Justice against acts that violate its prerogatives or the principle of subsidiarity should be recognized.

The distribution of competencies between the Union and its Member States should be carried out in accordance with efficiency criteria, and ensuring that the Union's objectives are met. The classification of competence categories (exclusive to the Union, shared and complementary to those of the Member States) should not consist of watertight compartments or rigid catalogues that could paralyse the Union's capacity to act and hinder its development.

The simplification of legislative instruments and procedures is one of the initial requirements in order to achieve a Union of greater legitimacy and efficiency.

As for the simplification of instruments, we support the consideration of the three so-called "pillars" of the Union as equals, without prejudice to the possibility of conserving certain special characteristics in certain areas, such as foreign policy. It is also necessary to use denominations that are more understandable and easily identifiable, such as laws and regulations. This would also make it possible to establish a hierarchy among the different types of rules to the benefit of legal certainty and the understanding of Union Law by the citizens.

With regard to legislative procedures, we believe that the Treaty should explicitly recognize codecision as the ordinary procedure and that decisions should be adopted by qualified majority voting and not by unanimity, as a general rule that is compatible with certain exceptions, especially in matters that require ratification by Member States. The extension of qualified majority voting would entail the need to guarantee the principle of representativity.

VI. THE UNION'S ARCHITECTURE: THE INSTITUTIONS

One of the most difficult challenges faced by the Convention is the reform of the Union's internal architecture. In order to successfully meet this challenge, long-standing debates such as the argument between federalists and intergovernmentalists or the rivalry between the Commission and the Council must be overcome.

Our intent is for the maintenance of the basic balances of the “institutional triangle” (Council, Commission, and European Parliament), and the preservation of the essential characteristics of the current “Community method”.

The European Parliament, as the representative body of the citizens, is and ought to be the emergent institution of the Union. Its powers have been successively broadened by each reform of the Treaties, and the future Constitutional Treaty should be no exception. The Parliament’s powers should be expanded by applying the codecision procedure in planning and performing the strategic programme of the European Council.

As for the Commission, we want it to be a strong and independent Institution, with its right of initiative strengthened in all matters that are under the competence of the Union and we want it to continue to be the motor of integration, the defender of Community patrimony, the guardian of the Treaties and the guarantor of the general interest. We also propose the strengthening of the competences of the Commission by attributing to it the power to approve delegated legislation and by extending the Community method to all Justice and Interior matters (except for cooperation in police and penal matters). The Commission has to be an agile and dynamic body, and so we support the Convention’s efforts in this direction. Lastly, in order for its president to enjoy the maximum political support on the European stage, we propose that the president be elected by the European Parliament, based on the proposal of the European Council, which would decide by qualified majority, taking into account the results of the European elections.

The European Council, keeping its position as the political vertex of the Institutions and safeguarding the balance among them, should fully exercise the responsibilities attributed to it by Article 4 of the constitutional Treaty: “It shall provide the Union with the necessary thrust for its development and define its general political guidelines”. The enhancement of the management of its prerogatives after enlargement, and the need to give the EU greater effectiveness and visibility require the creation of a stable Council presidency, with a term of office substantially longer than the current six months, through a method that ensures respect for the principle of equality among all Member States.

The essential functions of the President thus elected would be to prepare and preside the meetings of the European Council, ensure the follow-up of decisions adopted by the Council (to which end it could also preside the General Affairs body of the Council of Ministers), to represent the Union

abroad (with the support of the Union's Minister of Foreign Affairs, and without prejudice to the competences of the Commission), and to inform the European Parliament regarding the work of the European Council.

The Council of Ministers should maintain the role assigned to it by the Treaties: it is not a mere intergovernmental forum, but the Community institution in which the Member States express their opinions, defend their interests and forge common positions that are subsequently put to and negotiated with the Commission and the European Parliament. The rotating presidency should be replaced with a team presidency system, in which five States would serve a two-year group presidency coinciding with the duration of the strategic pluriannual programmes whose establishment was agreed at the European Council at Seville. The distribution of positions or "portfolios" within each presidential group could be established beforehand or be agreed upon by consensus among its members.

This system is compatible with the implementation of certain "institutional presidencies": the President of the European Council would preside the General Affairs body, while the Minister of Foreign Affairs could preside the Foreign Relations body.

Without a reform of the system of presidencies, in a Union of 25 or more members, the Council would no longer be able to be an active element of the institutional triangle, but would be relegated to a "reactive" role. One of the essential powers of the Council Presidency, that of presenting compromise formulas, would be severely curtailed, because in an enlarged Union, the formulation of such proposals would require an amount of time and dedication that would be incompatible with a changing Presidency every six months.

If the future Treaty strengthens the powers of the European Parliament and of the Commission as we propose, but does not improve the Council's operational structures, the institutional equilibrium that exists today would be destroyed and it would make it impossible for the current Community method to work effectively as the voice of the Council, the voice of the States of the Union would be heard belatedly and poorly.

The current Union is characterized by being "a community of law", in the happy expression coined by the Court of Justice in Luxembourg. The future Union will not lose this characteristic –on the contrary. Therefore, the Court of Justice should be strengthened, converting it into a true Supreme

Court of Justice of the European Union.

The national Parliaments, as representatives of the sovereignty of each of our nations, constitute the primary source of legitimacy, and therefore, of democratic control. We are in favour of national legislative chambers' active participation in the work of the European Union, especially in terms of the effective monitoring of the actions of the respective national Governments. Furthermore, it would play a fundamental role in ensuring that the principle of subsidiarity is observed by the Commission in formulating its proposals. Moreover, the task of national parliaments in the context of the decision-making procedure should be reflected in a protocol annexed to the Constitutional Treaty, which would constitute a veritable Charter of the legislative chambers of each nation.

The adoption of a "Charter of National Parliaments" could reinforce and contribute to the institutionalisation of the role that they are to play in the Union. Among other matters, the Charter could establish the approval of the parliaments of Member States, as a requirement for the Union to be able to assume competencies that have not been previously recognized by the Treaties.

The proposal for the establishment of a European Congress in which representatives of the European Parliament and the National Parliaments would take part, is another idea that merits support. It could be placed in charge of debating the orientations of the European Council and of the programme of work of the Commission. In any case, it would be a political and not a legislative body, which would only be able to adopt resolutions or recommendations.

In spite of its limitation to basic matters and its presentation in the form of a brief summary, the above could serve as the starting point of our contribution to the success of the Convention. This could serve as our basic guide to continue to generate confidence in the project through which we Europeans have decided to preserve our values, resolve our differences, create an area of freedom, and develop a common political, economic and social reality.