

A new kick-off for Europe: Rediscovering the community spirit 16 proposals

Paul GOLDSCHMIDT, former director at the European Commission

The revival of Europe is on the agenda. Nearly two years after the resounding results of the Dutch and French referendums, the German presidency should announce that **the institutional process is once again on track**.

It is therefore not the time to draft a text addressing fundamental political issues, but rather to establish **simple rules** that will allow a smooth functioning of a 27-member Union.

In this context, the Thomas More Institute wishes to bring today its contribution to the debate by publishing the **16 proposals for a new kick-off by Paul GOLDSCHMIDT**, former Director at the European Commission.

The proposals draw their inspiration from the vision and Community methodology that had proved so successful in the process of European construction; they are structured a simple and bold idea: **the creation, within the Treaty, of two distinct levels of participation: the Membership of the**

Union by all Member States and the Membership of the Community, for those members wishing to share additional areas of cooperation.

This distinction, together with its institutional, legal and financial consequences, would allow **the necessary flexibility needed by a 27-member Union**.

In addition, by allowing the members of the sole Union **to join selectively the policies of the Community as they choose**, this distinction would considerably reduce the risks of future dead-locks.

These proposals which aim at a modest but solid re-launching of the European integration process, should be reinforced by measures that **return its political control to the citizens**.

It is indeed the **emergence of a political Europe** that is needed, an objective to which the Thomas More Institute wishes to bring its contribution.

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Foreword

To revive Europe! To emerge from the deadlock in which it was thrown by the rejection of the Constitutional Treaty! To reform its institutions which are no longer adequate for the efficiency of a Union of 27 members! Be they wishful or not, these thoughts, though widely shared, give little help to act and they fail to answer the question "for what?"

There is a degree of consensus concerning the **formal stakes** of the reform, which aim at making the Union's more efficient, its processes more democratic, making its actions more understandable and its institutions more transparent and responsible. However the question "what for?" remains unanswered. Or, to put it differently: "based on which vision for Europe?" "On which identity?" "To weigh on which **substantive stakes** and in which direction?" It is first and foremost these questions that the Thomas More Institute wishes to address by formulating proposals as well as answers during the debate that will unfold inside the Union now or over the coming months¹. We also wish that greater attention be paid to these questions during the present and forthcoming electoral campaigns taking place in several countries of the Union. Moreover, are they not fundamental matters for democracy within our regions and our nations? One can consider that they form the underlying thread referred to by Commission President Jose Manuel Barroso when he speaks of "a new dynamic" or "a soul for Europe".

On the eve of the fiftieth anniversary of the Treaty of Rome², those who lived through this event share the conviction that the founding fathers had a common vision of Europe, in its deep-rooted identity (transcending the still recent traumas that had ravaged the continent), and that the stakes justified "pooling within a **Community**" elements of sovereignty that our countries were less and less able to exercise on their own in the new global reality³.

But, one should remember that, during the first years of existence of the new Community, two alternative visions of Europe were taking shape. The Comecon, formalising surrender rather than a sharing of sovereignty, institutionalised the status of "satellite" of the countries sacrificed on the altar of Yalta. The Comecon dissolved in 1991, victim of communism's implosion and most of its members, previously under the yoke of the Soviet Union, have now joined the European Union. The third vision, strictly focussed on free trade (free trade was also one - but not the exclusive - objective of the Community) led to the establishment of EFTA in 1960. Denmark and the United Kingdom left in 1972 to join the European Economic Community, followed in 1985 by Portugal and in 1995 by Austria, Finland and Sweden. EFTA still exists today; it encompasses four countries: Iceland, Lichtenstein, Norway and Switzerland.

¹ See article by Jean-Thomas Lesueur "Europe in the presidential debate: false debates mask the real stakes", in *La Revue parlementaire* (N° 895, March 2007) available on the Institute's Webb site: www.institut-thomas-more.org

² One shall recall that the late Jean-François Deniau, then a young diplomat, charged with the task of drafting the preamble to the Treaty of Rome had inserted the word "ideal".

³ See the excellent analysis on the current status of the idea of Community by Sylvie Goulard, "*le coq et la perle*", Paris, Le Seuil, 2007.



Since then, and some regret it, the expression "Community" (a reality enshrined in the Treaties that survive) has been replaced by "Union" conveying more a federalist concept while, paradoxically, the political cohesion of Europe has been weakening due, apparently, to the successive enlargements, despite a commensurate increase in its economic power.

The sixteen propositions presented hereunder, do not aim at bringing solutions to the fundamental stakes that we have mentioned. The Thomas More Institute has every intention to deal with these questions over the period 2007-2009 (date of the next European parliamentary elections), and to put forward strongly argued novel solutions.

The proposals represent the views of an individual who, during his private and professional life, has been directly involved in the nuts and bolts of the European construction and associated with one of its most emblematic projects, the success of which remains thoroughly underrated in demagogic positions voiced today: the launching of EMU. The structure put forward does not purport to represent a miraculous solution to overcome the deadlock, nor do we underestimate the political objections that they will unavoidably raise. However, it appeared appropriate to the Institute to publicise these proposals for at least the following four reasons:

- They are inspired in all modesty, while deliberately circumscribing the debate to its institutional dimensions, by the same combination of audacity and pragmatism that characterised the founding fathers of the European construction.
- By updating the concept and the term **Community**, they stimulate the search for an answer to the questions of European identity and its purpose, without pretending to answer these questions, as this is not their objective.
- These proposals, by refocusing institutional reform around the political priorities of Europe – in fact, an act of **political will** – and giving full recognition to the principle of **subsidiarity**, contribute to nurture the debate on the **substantive stakes** mentioned above.
- They give ample consideration to the issue of "democratic deficit" and the need to encourage the European citizen to re-appropriate the process of integration.

Some might be tempted to classify the ideas put forward by Paul Goldschmidt, as belonging to the category of proposals calling for a "two speed Europe". The author rejects this interpretation. A two speed Europe would entail separate constituencies, one of which would appear as a "second class Europe". The proposed architecture aims, once fully implemented, to retain maximum clarity and legibility. It allows States and/or their public opinions who may be more reticent to pool rapidly elements of sovereignty (symbolised by the right of veto), to modulate their integration within the new institutional framework – both, so to speak, in space and time – derived from a democratically assumed choice, while allowing those who wish to embrace the Community in full to develop for the benefit of all the "new dynamic" referred to by Jose Manuel Barroso.

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I. 5 premises, 5 objectives

A. Ensure clarity in the revival process

Premise

The shelving of the reforms proposed in the draft Constitutional Treaty, considered as indispensable for the smooth functioning of a Union of 27 Member States, urgently requires an agreement on a renovated structure. It needs to be adapted not only to the challenges arising from the internal organisation of the Union, but also to those stemming from the fast moving geopolitical context resulting from economic globalisation, the emergence of new economic and political powers of continental stature and the appearance of global threats. The factors demand more limited objectives that are aimed and focussed on essentials. The "need for Europe" will thus become more apparent.

Objective

Dare suggesting innovative proposals as to the overall approach while fully taking into account past successes and the reforms that are already subject of a consensus, but also bearing in mind the factors that have led to the blocking of these same reforms. Escape from the doctrine of "constructive ambiguities" by defining very precisely the perimeter of areas of shared responsibility among Member States.

B. Hand European integration back to the Europeans

Premise

One often hears the reproach of a considerable democratic "deficit" in the European construction and it would be foolish to pretend that it is only a perception. This state of mind, deeply anchored in the public opinion of Member States, underscores the need for a re-appropriation by the citizen of both the process of European integration and of its political control. In doing so, one will counter the prevailing opinion that Europe is the private domain of an elitist technocratic privileged group, disconnected from the democratic process that is the foundation of the Union and its Members.

Objective

Dare to trust the citizen and restore political responsibility at all levels of European decision making by organising and harmonising the rules for popular consultation concerning matters relating to the Union such as the approval of Treaties, their amendment and the organisation of European elections.

C. Re-centre the process of European integration on the fundamental issues

Premise

The rejection of the draft Constitutional Treaty by France and the Netherlands reflects first and foremost the growing alienation of the citizen with regard to the process of European integration; alienation that is often encouraged at national level by short term domestic policy considerations. In matters such as immigration, de-localisation, employment, economic policy and many others, by capitalising on an inborn resistance to change and on the fears that they generate, it is often suggested that the Member States are better equipped to protect individually the interests of their citizens than concerted policies at European level.

Objective

Limit any new initiative to the fundamental issues concerning the long term future of the Union by focussing on structural and operational questions and adhering strictly to the principle of subsidiarity. Avoid being sidetracked in framing by Treaty specific policies that a fast moving world environment and changing social and economic realities risk to make rapidly obsolete.



D. A new approach to negotiations

Premise

It is of the highest importance that the question of safeguarding the work accomplished in the draft Constitutional Treaty does not in itself become an additional source of confrontation, as seems to be the case. Even though two thirds of the Member States have ratified this project, it is unrealistic to think that mere cosmetic changes will lead to unanimous approval. Each time that it is possible, it will behave negotiators to privilege the existing agreements but not insofar as they would lead to abandoning the objectives outlined here above.

Objective

Propose a new approach that will create a fair equilibrium between emphasising the accomplishments and techniques (méthode communautaire) that has been the key to the past progress and the necessity of structural reforms guaranteeing its future development.

E. Simplicity and transparency in the structures of the Union

Premise

Institutional structures within the Union have proliferated during the first half century of its existence. Their multiplication and complexity make it extremely difficult to understand their purpose, powers and operating rules exacerbating the citizen's feeling of distance as well of a democratic "hold up".

Objective

Build the future on concepts that have proven their worth by institutionalising in a radical way the idea of "re-enforced cooperation", while at the same time limiting the proliferation of "ad hoc" structures which are source of inefficiencies and dissensions and where necessary eliminating them altogether.

II. 16 Proposals

A. What kind of Treaty?

1. Substitute the title «Institutional Treaty » instead of "Constitutional Treaty"

With the objective of facilitating a re-appropriation by the citizen of the process of integration it is suggested that this first, largely cosmetic, change will appease those who have challenged the "constitutional" nature of the Treaty.

The two denominations are sufficiently close and at the same time sufficiently different to ensure a

continuity of the process underway, while permitting significant changes and the correction of identified weaknesses.

Among the latter, one should note the length and scope of the document which, lacking in clarity, rendered its comprehension largely indigestible to the European citizen.



2. Following a preamble recalling the fundamental values of the Union, focus on structures for the Treaty

All chapters concerning Union “policies” should be excluded from the main body of the Treaty. Indeed, it is in their nature to have to be adjusted repeatedly in light of political, social and economic developments making them unsuitable for inclusion in a document whose essence is long term creating a stable institutional framework. Matters, included in existing Treaties, referring to policies could be moved to annexes. The Treaty itself would provide suitable rules for their amendment along similar lines governing legislation of similar nature.

This refocusing would in no way inhibit a codification within the Treaty of the fundamental values on which Union integration is based as these are perennial by

nature. They include inter alia human rights such as freedom of conscience, of speech and equality in law. To be added are the pillars concerning the freedom of movement of people, goods and capital, the principles of non discrimination between citizens of the Union as well as any principle or right that applies uniformly throughout the Union and benefits from a large non circumstantial majority support.

Focusing the Treaty on structures and procedures affords also the advantage of reducing the temptation of deflecting public opinion from the main purpose towards particular national interests that would necessarily be highlighted in a more exhaustive Treaty.

B. What structure?

3. Create two distinct statuses in the Treaty: Membership of the European Union and within the Union, Membership of the European Community

The European Union remains the crowning edifice of Europe. It includes all Member States. Its nature is “**Intergovernmental**”.

Membership of the European Community, of a “**Supragovernmental**” nature (Pillar I), would be limited to those members of the Union that would adopt (and be capable of adopting) “**integrally, without restrictions or transition clauses**” the full body of European legislation (acquis communautaire) including full participation in Economic and Monetary Union (EMU).

Up until now, dual membership of the Union and the Community was the rule implying derogations (i.e. “opt out” of EMU for the United Kingdom and Denmark) or negotiating transition periods to allow, over time, the levelling of the playing field while avoiding disruptive consequences for new and old Member States that immediate compliance might entail (i.e. free movement of workers from new

Member States or immediate full rights to the Common Agricultural Policy for Poland).

The introduction of a clear distinction between the two constituencies would **facilitate considerably future “enlargement” negotiations**, (including the Turkish case), making the conclusion of an acceptable agreement for joining the Union possible within a relatively short and reasonable time, without waiting for the fulfilment of conditions necessary to join the Community. The fear of adverse consequences raised by the prospect of enlargement, - whether real or imagined - would be removed, clarifying the actual stakes involved and eliminating arguments that endanger the cohesion of the Union as is presently the case.

The opening of a negotiating process would remain however fully subordinated to the candidate’s compliance with the “Copenhagen” criteria.



4. Endow the European Union with the status of legal personality

This measure follows from the proposed structural change. It should also be translated in the

differentiated management of the Union and the Community.

5. Differentiate between the budget of the Union and that of the Community

This is also an unavoidable consequence of the proposed structure.

At present the Community budget covers the financial needs of the Union. This is possible because of the identity between the memberships of both entities.

The budget of the Union would be negotiated and distributed between all member States along similar lines to those existing today. The management would be entrusted to the Secretariat General of the Council. In light of its "intergovernmental" nature, it would be approved by **national Parliaments**. To avoid blockages, it should be adopted by a qualified majority

of countries (say 2/3) representing at least 60% of the population.

The budget of the Community would be proposed by the Commission and adopted by the Member States and MEPs representing the Members of the Community. This clause limits in a significant way the powers of Union Members who are not Members of the Community and aims at creating a powerful incentive for them to join. It is the quid pro quo for the "op out" that benefits Members of the Union who choose to remain outside the Community.

6. Adopt a flexible structure: possibility for Union Members to participate on a voluntary and selective basis to Community policies and programs

Nothing would prevent – to the contrary, it should be broadly encouraged – a Member of the Union to negotiate with the Commission (as executive arm of the Community) its participation on a selective basis to Community programs and policies, including EMU.

The quid pro quo would be an ad hoc contribution to the budgets of the relevant programs. While current practices could apply for assigning budget contributions to Community Members, specific contributions by Union members would take into account disbursement criteria (to avoid adverse selection bias) as well as a contribution to cover overhead costs of the Community.

The "participation contracts" would be sanctioned by the Council and the Parliament, and would grant full voting rights to the MEPs of the Union Member on the relevant matters covered by the contract.

With regard to countries which are today Members of the Community but who benefit either of derogations or of delays for full implementation of Community legislation, one could envisage a transition period (say 5 to 8 years) during which each country would either adopt fully Community rules or decide to opt for membership of the Union only. Thus, if the United Kingdom did not wish to join EMU, it could withdraw from the Community while, if it wished, negotiate its participation in a range of Community programs to its liking.

This structural flexibility should also allow, as is already the case, **participation of third countries to Community programs** (i.e. Switzerland's, Norway's and Iceland's participation in Schengen). These arrangements could also facilitate negotiations for the eventual withdrawal of a Member from the Union (see hereunder).



C. Procedures for ratifying and amending the Treaty

7. Organise simultaneous popular votes in all Member States concerning the adoption of the Treaty

The Institutional Treaty would be submitted to a **simultaneous vote in all Member States** in order to ensure homogenous voting conditions and avoid that the results of a particular State influence results in another and requiring a qualified majority of Member States and population.

Without reopening the question of Union Membership, the vote should give the citizen **a clear opportunity to express preference for membership of the Union alone or of both the Union and the**

Community. In this way citizens would re-appropriate fully the degree of participation desired in the European construction that seems most appropriate.

For countries where ratification through Referenda is not presently in line with existing legislation, the appropriate authorities could undertake to ratify the Treaty in line with the popular vote and thereafter to amend their own laws in order to render subsequent referenda on European matters legally binding.

8. Adopt alternative procedures for amendments to the Treaty

Even if the Treaty focuses only on institutional matters and fundamental principles, a Union with 27 Members (and beyond) cannot function properly if ratification and amendment procedures grant explicitly or implicitly a veto right to any of its Members.

Therefore, one could envisage that ratification of amendments be subject to one of the two following procedures (as is currently the case in France: Referendum or adoption by Congress) as determined in each case by the European Council in a vote requiring 75% of Member States representing a

minimum of 75 % of the population. At European level the choice could be between:

A popular vote along the lines described above organised simultaneously in each Member State (Proposal 7).

A vote by the European Parliament requiring a qualified majority of 75% and restricted to articles that would have been specifically designated by the outgoing Parliament immediately prior to an election. (e.g. the Belgian system which allows the voter to express his views and avoids granting of a blank cheque to the incoming Parliament).

9. Introduce a procedure of withdrawal from the Union and /or the Community

A withdrawal procedure should be introduced as a **corollary of abandoning the unanimous voting requirement** in all matters.

The flexibility arising from the possibility of participation by non Member States in Community

programs (see hereabove proposal 6.e) should greatly facilitate the negotiation of such a withdrawal. This would provide a solution to the particularly difficult question of a country wishing to remain within the EMU while withdrawing from the Union itself.



D. Voting rights within the European Council.

10. Maintain for the Union, the rules proposed for the draft Constitutional Treaty and, for the Community, the qualified majority in all areas still requiring unanimity

At Union level there does not appear to be a strong case to unravel the agreement reached in the failed draft Constitutional Treaty.

At Community level, it would be in the spirit of the proposed structure to **broaden the scope of qualified majority voting to all areas still requiring unanimity.**

Such measures would considerably facilitate the Community's legislative process and would constitute a major step forward, limited to Members who,

through their renewed commitment, have declared themselves in favour of "generalised re-enforced cooperation" within the Community.

Let us be reminded that, in the proposed scheme, Members of the Union and their MEPs who would negotiate a selective participation in Community programs would not vote for their **initial** budget, but could be granted voting rights for Directives and regulatory measures affecting the programs in which they participate.

E. European Parliament

11. Harmonise election rules for the European Parliament

It would be appropriate to discuss the harmonisation of the electoral code for European Parliamentary elections within the framework of the Institutional Treaty.

If it is clear that no single electoral system is ideal, it is also undeniable that the present system – in which each Member State is free to set its own rules – leads to very unsatisfactory outcomes and lacks transparency.

An agreement on a **uniform voting procedure (preferably limited to one round – in order to**

limit costs) would promote a European-wide electoral landscape, distinct from national particularisms and would strengthen the image of the Union within the citizen's conscience.

A harmonised code would also encourage the emergence of Europe-wide party political groupings more independent of national parties. The authority and legitimacy of the European Parliament would thus be strengthened.

F. Procedures concerning Directives and Regulations

12. Adopt a clear distinction between Directives applicable to the Union and those restricted to the Community

This distinction is not meant in anyway to put into question the Commission's "right of initiative."

The Treaty would specify that Directives would limit their scope to framing policies by defining their

purpose, the resources allocated (budget), the controls and eventual sanctions. The Parliament should however retain in all cases its rights concerning monitoring and approval of all significant aspects of



the legislation, while allowing a more flexible procedure for adapting operating regulations to keep pace with unfolding external developments.

The principles applied in determining “level 1” legislation in the Lamfalussy process could serve as a guideline.

13. Adopt qualified majority voting for sensitive matters

There would no longer be any matter subject to unanimous consent.

Matters that are moved from the body of the Treaty to its annexes (see proposal 2.a) could become subject to qualified majority voting in case of amendments.

New Directives touching on sensitive questions, predetermined by the Treaty, could also be subject to qualified majority voting.

14. Regulation to be the responsibility of the Commission

Within the strict framework of the Directives, the Commission would be responsible for establishing all Regulations and practical measures for the implementation of European legislation.

Regulations would be drafted in consultation with specialised bodies (public or private) designated by the Directives.

Their adoption and/or amendment would be subject to a simplified approval process giving an oversight right

to both the Council and the European Parliament to ensure conformity of the regulations with the Directives and with developments in the field covered by the legislation.

The Commission would be accountable to the Council and Parliament for the conformity of Regulations with the base legislation and responsible for their implementation.

G. Make up of the Commission

15. Limit the Commission to 15 members, open to nationals of all Member States

The arrangements negotiated for the draft Constitutional Treaty could be carried over as far as the number of Commissioners is concerned. As Commissioners are not supposed to represent their country of origin, nothing should prevent some of them to be selected among Member States belonging only to the Union. Their number could however be capped to, say, 3.

There are two reasons for this proposal: in the first place it would underline further the “neutrality” that is supposed to be embedded in the Commissioner’s attitude and broaden simultaneously the pool of talent available for the selection of Commission Members.

Secondly, the daily working relationship between Commissioners would enhance a smooth cooperation between the Union and the Community.

The same principle could be extended with regard to the recruitment of Commission staff from Union only Members. One could suggest a cap of say 50% of the “notional” quota to which the Member State would be entitled if it was a Member of the Community. So as to keep a maximum degree of objectivity, one should avoid linking recruitment from non Community Members to the negotiations they might otherwise conduct for participating in Community programs.



H. The representation of the Union towards the outside world

16. Make a priority objective of the gradual implementation of a unified external representation of the Union

The negotiation of the Institutional Treaty is the appropriate setting for considering the delicate question of the external representation of the Union. Short of reaching agreement, which remains unrealistic, it should endeavour to establish the principles governing future developments.

Within multilateral institutions, Member States will only be heard and be able to influence the outcomes if they speak with a single voice. This also applies to negotiations with other States or large multinational private corporations.

Though benefitting today from many strengths linked to their wealth, their level of education and the quality of their research, Member States of the Union will find themselves losing rapidly their comparative advantage. Thus, the social model of which Europe is justifiably proud, will only be sustainable if the new Member States are more fully integrated within the Union, so as to offer to the outside world a strong unified political and economic front from which it can best protect its Members' interests.

The only credible response is to speak in the name of the Union with a single voice. The long-term objective can only be a unified representation within multilateral

institutions and towards third countries. The Union has demonstrated its capacity to create innovative operational structures (ECB, Eurogroup, role of the Commission in WTO negotiations, coordination of Members at the IMF and of ambassadors at local diplomatic level).

The Euro is today unquestionably the second currency in importance. If utilised in a coherent fashion, it could become a decisive factor in the world economic dialogue. The absence of a sufficiently coordinated economic policy within the Eurozone (necessary counterweight to a unified monetary policy), weakens considerably the power of this major trump card.

Another unescapable dimension concerns defence matters. It includes the question of the control of the nuclear arsenal. It would be unrealistic to expect that the States concerned would be willing to abandon their exclusive sovereignty in this field for the foreseeable future. This truth should however should not prevent an Institutional agreement underpinning the might of the Union.

It would therefore be highly desirable that the Institutional Treaty lays the ground for a gradual unified representation of the Union.



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