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## **A Constitution for the European Federation: A Steady Development of Existing Achievements**

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**A Constitution for the European Federation:  
A Steady Development of Existing Achievements**

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In the run-up to the Nice summit there is a sharpened tone in the debate about the future form of the European institutional system. The criticism centres around the vision of the German Secretary of State, Joschka Fischer, which he first presented on 12 May 2000 at Humboldt University in Berlin and recently repeated for the Belgian Parliament. What is surprising is not so much the sceptical reaction from Great Britain as the untypically sharp statements from the French Secretary of State, Hubert Védrine. Not only did Védrine attack Fischer for his visionary thought experiment, he also declined his proposal in Nice to summon a further reform conference.

Irrespective of this current conflict, which is to be viewed against the background of the French domestic policy, it can hardly be contested that the Union will be require further reforms, beyond the resolutions in Nice. If, like Fisher, we accept that it is politically imperative to expand the Union both towards the East and the Southeast, then it is necessary to accommodate the institutions and our view of integration to the new facts. The principles and maxims at the basis of Fischer's model will certainly find broad consent. The reform and the further development of European institutions must aim to maintain a functioning Europe when the Union encompasses 25 or 30 member states. In a federation of nation-states, subsidiarity must serve as the highest principle in partitioning sovereignty, the vertical partitioning of authorities between the nation-states and the European Federation. And finally, given the economic and cultural diversity of the future members, it seems to make sense to envisage the possibilities for a flexible integration, consequently to enable joint policies to be carried out in some areas without the participation of all of the members. This would be similar to common currency and economic union today, which excludes some members.

These basic principles allow for a great deal of freedom in concretely structuring institutions. Fischer's formulations of the proposals for the institutional system are very open, and they fail to offer solutions for numerous pressing problems in the Union, which must be approached at the next governmental conference. Thus, for instance, his proposal is

ambiguous with respect to how the “European Government,” be it “a developed European Commission” or a body of national ministers, is to be appointed, and it does not determine how decisions are to be made in the European Council or a federal second chamber. But both problems must be solved today to ensure that the Union will be able to function in the next rounds of expansion. Védrine has already drawn attention to this, too. Moreover, Fischer’s model departs from the previous logic of the political system of the EU and partially turns back of some of the advances that have already been made. Some elements of Fischer’s ideas, such as his view that there should be a directly elected President or a second chamber according to the US senate model, are reminiscent of the American presidential system. However, thus far the institutional system of the EU has operated according to the model of parliamentary democracy – like most of the constitutions in Europe. A parliamentary democratic system would thus have the advantage of being more familiar to the European citizenry. Fischer’s proposal signifies a break with the institutional tradition of the EU.

### **Weakened Democratisation and Renewed Nationalisation**

In comparison with the present Union, Fischer’s ideas about the European Federation imply both a weakening of the process of democratisation and a return to the strong representation of national governments. The present, directly elected European Parliament would be replaced by a chamber consisting of delegates of the national parliaments. Those familiar with the work load of the European representatives know that this type of solution would simply be impracticable: the considerable legislative work at the European level would place an additional burden upon the already overburdened national parliament members. Above all, however, through this indirect representation, European policy would suffer a considerable loss of legitimacy. Besides securing peace, one of the main motives of the expansion of the Union has always been, and will always be, to further the democratisation of Europe. It would thus be disquieting if this were relinquished at the highest European legislative level.

Fischer’s model intensifies the role of nation-states: it especially gives their governments excessive weight in the decision-making system. In Fischer’s model the “European Government” would consist of ministers from the member states or, as previously, of European Commissioners, who are appointed by the member states; the second chamber would either represent the member states with elected senators, as in the US senate, or with government representatives, as in the German *Bundesrat*; the first chamber would consist of members of the national parliaments, and in most European parliamentary systems the

majority of members belong to the governing party in any case. Given the degree to which EU politics and EU law now affects the citizenry, an intergovernmental model of this sort no longer seems to be appropriate.

### **Neither a Confederation nor a Federal State**

There is no point in discussing whether the European Federation ought to be a “confederation” or a “federal state.” This only creates an unnecessary polarisation. The EU has always been more than an association of states, or at least since the first direct elections of the European Parliament. On the other hand, given its national states, with their own history, culture, and language, Europe will never be able to develop into a real federal state, even if this may have been the vision of earlier European politicians. Both the vertical allocation of authority and the balance of institutions at the federal level are crucial for the distribution of power between the national governments and Europe. A future European Federation will have to solve two problems: first, it will have to overcome the problem of vertically allotting authority and integrating national states; and second, it will have to create a lasting institutional system at the level of the European legislature.

### **Dividing Sovereignty Between the Members and the Federation**

The principle of subsidiarity surely provides the right model for allotting authorities among the member states and the federation. The federation should only be responsible for tasks that really demand solutions at that level of authority. Authorities should primarily be assigned to the European level if the problems to be solved have a global, European-wide, or cross-border character, as is often the case in trade or environmental policy, or if a common policy has considerable political advantages, both domestically and in foreign affairs, such as in the common foreign affairs and security policies. In such a heterogeneous structure, however, the desire to develop uniform living conditions should not serve as a basis for EU policies. In emphasising the principle of subsidiarity, however, it is important to avoid illusions: In an age of global markets, global transport and communication systems, global environmental problems, and new political bloc building, it can be expected that the conditions named are sufficient enough that the majority of the political and legal measures needed will thus have to be relocated to the European level. Given this knowledge, it is necessary to create functional, fully democratically legitimized institutions at the level of the federation. However, it would

be advantageous if authorities were allotted more systematically than in the past. To do this, it will be necessary to see whether any of the authorities that have been moved to the EU level in ad-hoc processes could once again be moved back to the national level, for instance, in structural funds or regional policy.

### **Flexible Integration instead of a Europe of the avant-garde**

Because the increasing heterogeneity of the member states will make it increasingly difficult to jointly develop policy, it is very sensible to allow flexible forms of integration. Fischer's ideas aim at a Europe of the avant-garde, that is, at a fixed group of countries that would work together and strive for deeper integration. One disadvantage of this idea is that it creates a two-class federation. This is also the reason that the candidates for entry into the EU have rejected the idea. Accordingly, Janos Martonyi, the Hungarian Secretary of State, characterised the concept as the "death-blow to integration." Hubert Védrine had already drawn attention to other problems: How would the members of Europe's avant-garde be selected? What would remain of Europe's avant-garde if, as Fischer desires, access to it were forced to remain open and all the member states wanting to belong to it?

A less politically explosive solution would allow the flexible and functional co-operation of various territorial units. Each group of member states from a particular governance area could join together to work on a given policy or task. The scope of the co-operatives would be adapted to the problems that were to be solved (e.g. the Alp states could work together to solve tourist problems or the states adjoining the Rhine could work on water-quality problems) or on the basis of political will (as with the common currency). Such co-operation ought to be possible for sub-national units as well, like the German *Bundesländer* or municipal bodies. The American *special districts* could serve as a model here: these are associations of municipal bodies that aim to solve particular tasks; they normally have tax sovereignty, and their top officials are often directly elected. The organisation of such member state or cross-border co-operatives of sub-national bodies would have to be regulated through the European Treaties. They could take the possibilities for "closer co-operation" established by in the Treaty of Amsterdam as their basis. Expanding "closer co-operation" to the sub-national units and easing the conditions required for it (eradicating the requirement for a minimal number of members and veto rights for individual member states) could make flexible and differentiated forms of integration of this sort possible.

## **A Functional Institutional System**

To develop a long-term functional institutional system at the European level, it is by no means necessary to deviate from the previously trodden path of institutional development. To be able to act as a united Europe, we need not compromise democratic principles and return to a process of nationalisation. Institutional reform should not surrender what has already been attained, but further develop it. That is not only true for the allocation of legislative competencies and the definition of decision-making procedures, but also for the development of the European executive branch.

The basic components of a European legislative system that secure both democratic legitimacy and the decision-making capacity of the EU political system are already inherent in the institutional structure. With comparatively moderate reforms, a functional two chamber system could be developed on this basis; it would consist of the directly elected European Parliament and the European Council, composed of national government officials, as it now is. In contrast to Fischer's proposals, this would neither require annulling existing achievements (such as the directly elected parliament) nor introducing new institutions (such as a senate).

## **A Two-Chamber System**

For a system composed of a directly elected and a federative chamber to work, the line of demarcation between the Council and Parliament competencies must be rethought. In the co-decision procedure that is already practised in some areas today, the Parliament and the Council are equally involved in the decision-making process; in principle this practice ought to be expanded to all areas of European politics. This would expand the authorities of the European Parliament, and hence increase the democratic legitimation of European politics. There would only be exceptions to this principle in a few areas, where decisions would remain solely the Council's responsibility, but the Parliament would of course be consulted. This would affect foreign affairs and security policies, for example, as well as justice and home-affairs policy, decisions about financial distributions between the member states, and changes to the fundamental positions in the treaties of the European Federation or its constitution.

The rules for the election and composition of the European Parliament also stand in need of reform. Besides aiming at the development of common European voting rights, changes need to aim at more fairly representing the distribution of population and levelling out the existing disequilibrium between the size of the population and the number of representatives. The weighting of votes in the European Council also needs to be rethought: granting an unequal share of power to the small countries may have made sense when the concern was with balancing power between a few small and a few large countries in a Union composed of six, twelve, or maybe even fifteen members. But it will lead to unjustifiable distortions when we are dealing with over 20 small countries and a few large ones. This may be the main thrust of Gerhard Schröder's proposal to vote in accordance with the principle of the "double majority" in the future. As a result, resolutions would only be able to be taken up if they were supported by the majority of the member states and these member states simultaneously represented the majority of Europe's population.

However, by itself, a fairer representation of national interests in decision-making processes will not ensure that the EU will be capable of efficient political action. A change in the existing decision-making rules would be necessary for this. This is especially important for decision-making in the Council. The principle of unanimity should be restricted to intergovernmental conferences and constitutional decisions, as it is in sharp contrast with the above arguments, which aim at a more balanced system of power in Council decision-making. Hence, apart from these exceptions, decisions are to be made with a qualified or a simple majority; in this, the areas of application are to be further specified.

### **The Commission as European Government**

Fischer's proposals offer two possible ways of forming a European government. It should either develop out of the European Council, and consequently be formed by the national governments; or, on the basis of the existing commission structure, a President with far-reaching executive powers should be directly elected. Both options have serious disadvantages. The first option favours a return to nationalization with an intergovernmental model of EU governance, in which national governments play a crucial role in both preparing, formulating, and implementing European policies. Beyond this, given the work load of the national experts, it is questionable if and to what extent they would be able to manage the work in the EU. The second option evades these problems, but it is not realistic. The direct election of a Commission President requires both a developed European party

system and the corresponding competition between parties that are actively engaged throughout Europe. Yet neither of these prerequisites is in view. These are also valid reasons not to appoint the Commission President from the centre of the European Parliament.

Against this background, everything speaks in favour of maintaining the existing practices of appointment and political control in the Commission, which incorporate both the Council and the Parliament. In line with this, the members of the Commission (including the Commission President) will continue to be appointed by the European Council. The Parliament has to confirm the Council decisions. Moreover, referring to the already existing procedure for a vote of no confidence, it can demand the dissolution of the Commission by absolute majority.

The question of the structure of the executive branch is considerably more urgent than the regulation and appointment issues. And Fischer's views do not entail any concrete proposals about this. Gerhard Schröder's proposal does not appear to be particularly sensible either; he has suggested that every member state be represented by a Commissioner. Yet a European government consisting of 30 Commissioners, with their respective General Directorates, would unnecessarily inflate the European bureaucracy. There are other ways to create a lean and efficient and democratically composed European executive branch in an expanded European Union. The playing field for national representation can be expanded if, besides the maximal 20 Commissioners, the respective General Directors are also included in the political positions that are to be allocated. Because the EU will be enlarged one step at a time, it would be possible to gradually switch to politically-appointed General Directors.

### **An Elected President for the European Union**

The position of the President of the European Commission is largely comparable to that of a national head of government, if one ignores that, in contrast to the British Prime Minister or the German Chancellor, he or she can, at best, only informally influence the composition of the government. As *primus inter pares*, the President is largely entrusted with executive tasks. The present European institutional structures do not have a special political office for the purely representative functions, as exercised by the German President, for example. However, in the institutional reform, establishing such an office for the European President would make a great deal of sense. The European President would primarily have a symbolic, integrating function. He or she would represent the Union to the world and could play an important

political role as an internal arbitrator and intermediary between different member states or between individual member states and the European institutions.

This would further stimulate the integration process in an expanded Europe. Additionally, in the long run an important secondary effect could be connected with the establishment of such an office, if political incentives were correspondingly determined: namely, the creation of a European political party system. For this to occur, first of all, it is crucial that the European President be elected by the European Parliament. The member states would hardly accept such a procedure for selecting the President of the Commission, who has a very influential political position. But the direct election of a President of the European Union, who would primarily have representative rather than executive functions, could serve as a lever to set competition among European political parties in motion. It would provide an incentive for the development of parties active throughout Europe (for instance, from the presently existing parties in the European Parliament), which would have to co-operate in choosing common election candidates for the Presidential office. European elections would thus no longer be determined by competition between national parties, but by the election campaign of the European party alliance.

It cannot be expected that a functional European political party system be developed overnight. But developing one is of crucial importance for European integration. To deal with the lack of democratic legitimation in Europe, functional institutions are needed to aggregate, articulate, and integrate political interests. So in the long run, it is well conceivable that the Commission will be elected by the European Parliament. The European political party system is crucial for the democratisation of the Union. In reforming the existing institutional structures, promoting the development of such a party system should thus be a central concern.