6.3.2003

In Europe, the most significant redistribution of power since the Second World War is currently underway. It is taking place in the EU's constitution.

Only nation states have constitutions. The EU is being made into a state: a federal state. People have stopped speaking of a constitutional treaty and are openly preparing a constitution, which will take precedence over the laws of the Member States. According to Article 9 of the draft (6.2.2003), "The Constitution, and law adopted by the Union Institutions in exercising competences conferred on it by the Constitution, shall have primacy over the law of the Member States."

The draft constitution begins as follows: "Reflecting the will of the peoples and the States of Europe to build a common future, this Constitution establishes a Union [entitled …], within which the policies of the Member States shall be coordinated, and which shall administer certain common competences on a federal basis."

What is being established, then, is a new Union which in the case of the functions transferred to it will operate like a federal state. The question of its name remains open, but it has been suggested that the new Union would be called the United States of Europe or United Europe. The new Union needs to have a new name, so that it can be distinguished from the old in the same way that since Maastricht the EC has been a different institution than the EU.

What is being established is a Union which reflects the will of the peoples and states. If these do not happen to have the same will, then whose will is to be decisive?

In the case of powers brought within the Community framework (communitised) , the new Union will become a federal state.

Federal states are characterised by centralised power and supranational decision-making.

Supranational decision-making means that the will of the majority is decisive, and that the states which remain in the minority must execute the common decisions. For communitised matters, the power of decision becomes a monopoly of the centralised power.

A national democracy, which is based on a parliamentary system or “parliamentarism”, is a superior form of representative democracy to the EU’s supranational decision-making. There is no satisfactory theoretical definition of the concept of “supranational democracy”. How do we distinguish democratic majority decisions from dictation and force based on majority power? At a time when the EU is being made into the world’s second largest federal state, it is legitimate to ask whether it will be too big to be governed democratically, and whether democracy is possible only in those states where there is no supranational decision-making?

We cannot live in the hope that, over time, the EU federal state will become democratic. It must be democratic as early as the design stage and the concept of a “supranational democracy” needs to be thoroughly clarified.

In the Convention, where a draft constitution is being created from the top downwards for five hundred million Europeans, there prevails a total federalist hegemony. The overwhelming majority of members and deputy members want the EU to become a federal state. A large majority supports the Community method as the EU’s method of decision-making.

Those of us who support the intergovernmental method number only 15 (out of 207). We are from various different countries, and from all party groups.

The smaller the number of those who make the decisions in representative decision-making, the more unrepresentative will be the final result: difference and diversity are cut out. If only a small number of representatives are elected, only the mainstream trends will get their voices heard. The mainstream trend of policy in EU constitutional questions is federalism. The desire is to make the EU a federal state and a superpower.

The Convention contains 5-6 representatives of the parties of the GUE/NGL group (less than 3% of the representatives). In other words, from our point of view the Convention does not correspond to the relative political strengths of the EU countries.

A new feature is that supranational parties have been involved in the drafting of the EU Treaty. The representatives of four Europe-wide parties have each produced their own proposal for a constitution, and strive to work in the Convention within the Community framework. It is not certain, however, whether the national parties will commit themselves to the view of the supranational “europarties”, or of their majority. The europarties are still, up to now, synthetic creations.

The Convention participants from the GUE/NGL group have no resources – and neither do they have the united thinking – to produce their own common proposal.

Timetable

The Convention’s praesidium, which cannot be accused of democratic procedures, has published the framework of the constitution and some of the new Articles which it has been preparing.

According to the plan, the constitution would be divided into three parts: 1) the constitutional part (about 50 Articles), 2) Union policies and their implementation and 3) general and final provisions. In addition to this, a lofty preamble is being written for it.

The constitution will be secular law; however the Pope and other religious figures want it to have a reference to Europe’s Christian tradition as the ethical base of the new Union.

The first draft Articles have been published and the drafting process is continuing. The praesidium’s proposed constitution will be ready by the end of April.

The Convention has set itself a target by which its work would be ready to send to the Intergovernmental Conference (IGC) at the Thessalonika Summit on 20-21.6.2003. Since the federalists exercise hegemony in the Convention, their goal is for the constitution to be

approved at Thessalonika in the form which is proposed by the Convention. They would like the matter to be an open-and-shut case at the IGC to be convened in the autumn.

They want to change the timetable originally set, according to which the IGC would not be summoned until spring 2004. Originally, there was a desire to leave the Governments and Parliaments time for proper discussion of and reaction to the Convention's proposal. There is now an unwillingness to give this time, since as time drags on the "package" produced by the Convention would have to be opened and the federalists do not want this.

Mr Berlusconi wants the constitution to be finally approved at the Rome Summit in December 2003. He would like to see a new EU, with a new Treaty of Rome.

The first countries may well try to take the constitution to a national referendum at the same time as the next European elections, in June 2004.

Following ratifications by the Member States, the constitution would achieve legal force during 2007-2008. Then, a new European Union would be born, which would have legal personality in its own right and which would use its powers in the manner of a federal state.

Approval procedure

It is not known how the Convention will decide regarding its own proposal, nor is it known how the Member States will decide nationally regarding approval of the constitution.

In the Convention, the federalists want to produce one proposal which can be approved by the largest possible majority of Convention participants. Unanimity will not be reached, and so this is not being sought. If it is insisted that the Convention does not vote on the final result, a "quasi-majority" will be sought: it will be stated that the majority supports the proposal without voting.

In the Convention, it may be possible to lodge dissenting opinions on the draft constitution, but it is unlikely that the large countries or large political groups will do so. These will try to find a compromise, which will involve structures of both the Community method and the

intergovernmental method. Without such consensus the IGC will not approve the package in the form written by the Convention.

The Union needs legitimacy. In order to achieve this, in Ireland and Denmark a referendum will be organised in compliance with their national law, and this may also be done elsewhere, at least in the Netherlands, Portugal and France.

A national referendum should be demanded in all Member States, on the same day!

With the advent of the new Union, the old Union will be thrown on the scrapheap of history; but how this will happen has not yet been decided. Legally, the old Union has to be abolished unanimously. Now, it is difficult to believe that 22-23 countries will not be able to found a new Union if 2-3 countries reject the new constitution and do not agree to abolish the old Union and transfer its resources to the new one.

A new legal form will be generated for the EU from the political will of the current governing class, and no single country will be able to prevent this. Enacting the constitution is a process wherein jurisprudence yields to policy.

It is not known what will happen to the countries which reject the constitution and do not join the new Union. There have already been threats of their being shut out of EU cooperation and the common market.

It is probable that some sort of association option will remain for the old EU countries. However, the threat of remaining outside will surely pressure all countries towards approving the constitution which is being prepared in the Convention.

Competences

On the basis of the first Articles, the division between the competences of the Union (= the central power) and its independent Member States is not made clear.

Powers fall into three categories: the Union's monopoly competences, shared competences and the Union's supporting actions in matters which fall under national authority.

This division of competences is not written into the constitutional part, but rather into the second part, which defines the Union's policies.

On the basis of the Articles of the constitutional part, there is a clear desire for further harmonisation of economic policy, and for more of the Common Foreign and Security Policy to be transferred to the jurisdiction of the Union.

The division of power in these matters is linked to the resolution of institutional questions.

The Community method

The fact that someone supports the Community method does not make that person "right-wing" or "left-wing". It makes him or her a federalist. Those of the left in Northern Europe are more anti-federalist than those in the South.

The federalists reckon that by the Community method the EU will become a federal state, which is their goal.

The most essential feature of the Community method is the desire to make the decisions in the EU's own institutions according to their relative strengths. This means that as many new areas as possible will fall within the competence of the Community. This is supranational decision-making, and does not include the Member States' right of veto. The Member States who remain in the minority must be satisfied with the will of the majority, and must implement the joint decisions (of the central power).

The federalists want as many matters as possible to be decided within the EU's institutions by a qualified majority, and they want the qualified majority decisions to go automatically to the codecision procedure with the supranational European Parliament.

The Community method includes a strong Commission, which represents the central power. In that sense it will be a civil service power, or a “eurocracy”.

The federalists want the Commissioners to become the parliamentary government of the new federal state, which will enjoy the confidence of a supranational European Parliament. Related to this, the federalists want to elect the President of the Commission as President of the EU; this president would be elected by a qualified majority in the supranational European Parliament. Through this arrangement, the Commission would become the federal state government.

The federalists also want to communitise more of the areas which define national sovereignty by placing them within the jurisdiction of the Court of Justice of the European Communities. Through this, the political will of the large countries will assume a false mask of legality. The judgements of the EC’s joint courts of justice will reflect federal legislation.

The Community method is supported by all the Europe-wide parties. When the Union is transformed into a federal state, the parties too will become supranational. Of these europarties, the one which supports the federal state most clearly has been the European People’s Party (PPE).

The intergovernmental method

A move to the pure Community method would mean that the current intergovernmental method would be downgraded.

This method involves decisions being made within the EU institutions but – with the exception of matters pertaining to the codecision procedure – between representatives of the national governments. The desire is to make decisions ultimately within the Council, not within the supranational Parliament or the Commission, which enjoys the confidence of the Parliament.

The greater the proportion of EU decisions that are made unanimously, the greater the opportunity of a single state to exert influence. Through this, the right is generated for such a state to veto decisions which are negative from its own point of view. The more decisions that are made by qualified majority, the more the EU will make decisions in the manner of a federal state.

An alternative to a federal state and to supranational decision-making would be a democratisation of the current intergovernmental method: increasing transparency and publicity, and the extensive discussion of EU affairs in national parliaments.

The intergovernmental method should include the power of national parliaments in important matters, and particularly in the reform of the founding treaties. The power of national parliaments and the European Parliament cannot be reconciled. It is not easy for "europarliamentarism" to gain legitimacy in nation states, since this is supranational power in which the sovereignty of small countries is not protected against the centralised power formed by large countries.

The Convention is currently creating a situation in which no possibility will remain for national parliaments other than to say YES or NO to the constitution.
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They defend this lack of alternatives by the fact that, in the Convention, each parliament has two representatives.

This is not however an adequate justification for an actual transfer of power from national decision-making organs to a supranational Convention. The basic problem of the Convention is specifically its unrepresentative nature and a mode of operation which makes it impossible to properly discuss Convention matters in national parliaments. In the affairs of the Convention, parliamentarism – which is one of the characteristics of democracy – is not being implemented; drafting responsibility lies with governments, which must enjoy the confidence of national parliaments.

Qualified majority

The federalists, who exercise hegemony in the Convention, want to enact supranational laws by qualified majority. This means that small states will lose the right of veto. Large states will retain it: according to the Treaty of Nice, three such big countries together, in which 38% of the EU's residents live, will have the right of veto on qualified majority decisions.

Since large countries have a large representation in the European Parliament, their power would also grow due to the fact that all the qualified majority decisions of the Councils would automatically lead to the codecision procedure with the European Parliament.

If power is transferred via the qualified majority and codecision procedures to the central power, this means that it will be removed from national decision-making bodies. It is not easy to gain legitimacy for this on the basis of the drafting work of the Convention. Few of those half a billion Europeans, who are the objects of this drafting, feel that the Convention represents them, nor do they feel that the nations need or desire a constitution dictated from above.

The proposal of Germany and France

When Germany and France found that the Convention was moving towards the character of an intergovernmental conference they appointed their Foreign Ministers to the Convention. Greece and many of the applicant countries have followed their lead.

Not all countries (the Netherlands, Sweden, Finland, Austria, Luxembourg) have a representative in the Convention's presidium or secretariat, which draft the initial documents. Power is the ability to write the initial documents.

Whereas formerly it was thought that the EU would only become a federal state by the Community method, Germany and France are now creating a centralised power for the EU, which will make it a federal state, also by the intergovernmental method.

They have demanded – and, through their demands, are obtaining – a legal personality of its own for the EU. According to these demands, the constitution will include the EU Charter of Fundamental Rights produced by the previous Convention. They want the use of a qualified majority in all decision making, including foreign and security policy. They are demanding an increase in the power of the supranational European Parliament, via an increased use of the codecision procedure. In addition, they want two new presidents to be elected for the EU by qualified majority decisions (which favour large countries), one for the Council and one for the Commission, and the establishment of the post of EU Foreign Minister and an EU diplomatic administration.

Germany and France thus want a head of the Council who would be called the President. This Council President would not be chosen by the nations, but rather appointed by the European Council, i.e. by the euro élite (and possibly out of their own ranks). He would represent the French concept of the EU's nature. France does not wish to increase the power of the faceless, odourless and tasteless eurocrats in military affairs, nor does it wish to give global policy into the jurisdiction of the Commission.

The question of how decisions will be made regarding military and defence policy remains open. Germany and France want a common defence for the EU, which would be compatible with NATO and which would be reinforced by common armament. They may demand that a central defence obligation be written into the constitution, in the form of Article 5 of the WEU. For crisis management, which includes the enforcement of peace or in other words war, they want special common armament criteria in the manner of the EMU convergence criteria.

The EU Member States manage regional defence and the defence of conflicts between states through NATO. They have submitted their own armies directly to NATO command. The most expensive part of military costs is represented by espionage and reconnaissance, signals and communication, plus military command systems with their underground complexes. Since these already rest with NATO and it has been agreed that NATO will also donate them for use in EU crisis management operations, no-one is prepared to duplicate them.

In the EU region, there are 2 million soldiers in various armies. At the Helsinki summit it was decided to set up special crisis management forces, i.e. euro armies. For the purpose of these, 200,000 soldiers have been reserved, i.e. all forces of EU armies that are suitable for joint action. Of these, 60,000 soldiers would be in combat action at any one time.

The euro armies are not being set up for defence, but are for attack. The creation of a federal state type of superpower requires that the EU has its own crisis management attack forces. Crisis management is not front-line war, but restricted operations.

Since France has concentrated on securing the power of the Council in foreign, security and defence policy and Germany has supported this, Germany in turn has obtained the aid of France in Community affairs for resolutions in the affairs of the old Pillars I and III, which embody the spirit of a federal state and which reinforce central power.