

# **Continuation or Reorientation - What Future for European Integration?**

## **Inaugural Lecture**

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Esteemed Rector Magnificus,

Esteemed Dean of the Faculty of Law,

Dear colleagues,

Dear students,

Dear friends,

Ladies and gentlemen,

### **Opening remarks**

On the 25<sup>th</sup> of March the European Union celebrates the 50<sup>th</sup> anniversary of the Treaty of Rome by which the European Economic Community was established; the Netherlands being one of the founding members. Until this very day, albeit in revised form, this Treaty still constitutes the very centrepiece of the post-war European supranational legal order.

Anniversaries are a time of celebration, a time of praise of previous accomplishments and encouragements to keep up the good work. I am confident that the Informal Meeting of the Heads of State or Government of the Member States planned for the 25<sup>th</sup> of March will do an excellent job in issuing a statement to that effect.

Yet, these celebrations come at an awkward time for Europe: there is talk of a constitutional crisis and of a rift that goes through Europe caused by the Treaty establishing a Constitution for Europe. With the negative referenda in the Netherlands and France the destiny of this Treaty remains unclear. The initial disbelief triggered by the rejection of this European prestige project by the citizens of two of the founding members of the European Communities has given way for a certain resignation regarding the current state and the future perspectives for Europe. Taken aback were especially those who consider the Constitutional Treaty a substantial step forward. For some the importance of this project has existential proportions, as its failure is thought to jeopardize the future of European integration as a whole.

Indeed, the realization is creeping in that the trusted method of achieving progress in the integration process faces an uncertain future. Doubts about the stability of the European Union are raised. Much seems thus at stake and it is little surprising that German Presidency in the Council is currently undertaking major efforts to revitalize the Constitutional Treaty while at the same time some Member States that have already implemented said Treaty put pressure on the unwilling or hesitant rest.

The recent negative referenda in France and the Netherlands, as well as the general antipathy of the citizens in other Member States towards this Treaty should not be easily dismissed as the response of ill-informed citizens that oppose the Constitutional Treaty for the wrong reasons. Indeed, the truth may be somewhat more worrisome at least for those of us who are in principle in favour of European integration.

What I will argue here today is that the current situation in Europe is to a considerable extent caused by the persisting deficit of democratic procedures that would allow and maybe even require citizens to claim ownership of European policies and decisions-making. Under the current system continuing European integration both in terms of geographic widening and political deepening may not be a viable future option. What is needed is a fundamental review of today's institutional framework.

I would first of all like to introduce you to the basic *modus operandi* that has been applied in building Europe - a method that in my view has contributed to the current situation. Thereafter I will illustrate some of the main characteristics of today's

institutional structure, which form a stumbling block to a greater ownership of European citizens.

Finally, I would like to address the question how the present shortcomings could be addressed. In my view, the Constitutional Treaty does not provide a sustainable solution for the future. Instead we have to start to think outside the box by finally design an institutional framework that will at the very least no longer stand in the way of the ownership of citizens of European policies and decision-making.

### **Europe- Condemned to continues further integration?**

#### **[Ladies and Gentlemen]**

Looking back, European integration and with it the development of European law has taken place in waves. From setbacks mostly arose innovation and strength, as well as the collective will of the Member States to pick up the pieces, get back on their feet, and resume the integration process. At the end of the day the continuation of integration was safeguarded, even if this would require resuming construction on a different part of the European house by means of a different project. Past grand projects that have stranded on the cliffs of political and public resistance, such as the European Defence Community and the European Political Community of the 1950's – to name only too - remind the younger generation of European lawyers: *while Europe rarely lacked ambitions, it occasionally threatened to choke over them.*

The gradual Europeanization based on actual achievements, rather than a clear road map is anything but accidental. It even has a name: “Monnet-method”. It is closely linked to the visions of one of the masterminds of post-war European integration, the Frenchman Jean Monnet.

Monnet's vision of a united Europe were partly reflected in the famous Declaration by the French Minister of Foreign Affairs Robert Schuman in which the French government proposed the pooling of the French and German Coal and Steel production under a common authority. This was soon thereafter to become reality in the shape of the European Coal and Steel Community; the starting point of European

integration. For Monnet and others, barely five years after the end of World War II in Europe, the rapprochement of European states was considered a *condition sine qua non* for more stability in Europe. This was anticipated to be a slow process. Indeed, in the Schuman Declaration we find the following explanation: “*Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity.*”

The final aim of the European project remained largely in the dark. The preamble to the original EEC Treaty referred to the determination: “...to lay the foundations of an every closer union among the peoples of Europe...” A similar reference can be found in today’s EU Treaty. The lack of a “*finalité politique*”, a clearly defined final aim of European integration both in geographic and political terms was and until this very day still is a deliberate choice. It has been characterized as a “*constructive ambiguity*”, which is to be preferred over an unconstructive discussion on principles.

This process-based approach has put Europe in a position where it can only be as successful as the next integration step. Walter Hallstein, a less well-known but equally influential architect of the integration process and the first president of the Commission of the European Economic Community once famously compared European integration with a bicycle: a continues forward momentum created by the paddling is required in order to stop the bicycle from being pushed out of balance and from eventually falling to the side.

This ratio has served on more than one occasion as an underlying argument in creating the necessary momentum to bring the political elites of the Member States together in reaching consensus over the next integration step. At least equally important, in the Member States this has formed the main argument in gaining what in most instances amounted to the passive consent of the citizens for the steady transfer of decision-making powers to the European level.

The Monnet-method describes an inner logic to European integration: the political unification of Europe was to take place by means of economic integration through the introduction of a new legal order, establishing supranational institutions.

Indeed, the process has focused on the pooling of competencies for the exercise of policy. What was discounted for a long time were the consequences for the democratic legitimation and accountability of power increasingly exercised outside the established constitutional structures of the Member States and the impact this would have on the image of European integration in the eyes of its citizens. *Scharpf* observes rightly that efficiency rather than democracy has been perceived to ensure legitimacy.

**[Ladies and gentlemen]**

Economic integration served as a “*Politikersatz*”, i.e. as a substitute for politics. Techauer observes rightly that: “*By viewing political integration solely as consequence of economic integration ...Europe’s political leaders [have been released] of their responsibility for a consciously shaped political Union.*“

This is partly reflected in the institutional framework of the European Communities. Namely the European Commission in its role as an independent broker of the Community interest has become a synonym for a technocratic approach to governance applied in Europe.

The continuous widening and deepening of European integration has resulted in a disequilibrium. On the one side, the policy areas in which Europe effectively has taken over from the Member States in defining policies has increased steadily. On the other side, the extent to which the citizens of the Member States [the electorate] were involved in the decision-making process and the extent to which the European institutions as well as the national governments could actually be held accountable for their action became increasingly doubtful.

Ironically, the realization of this democratic deficit – as what it became known – provided new arguments for further integration steps rather than meaningful institutional reforms. This is highlighted by the far reaching competencies which were introduced with the Treaty on the European Union (Maastricht Treaty).

Since the Maastricht Treaty, each new Treaty amendment was considered as a sheet anchor essential to keep Europe from drifting off course or, even worse, from stranding. “*From Amsterdam Left-overs to Nice Hangovers*”, Andrew Duff observed at the end of the negotiations on the Treaty of Nice. Already back then he predicted that “[L]ike a hangover, things can only get worse before they get better.” How right he was !

Seeking to generate the necessary momentum for reforms, Europe for some time has deliberately presented itself in an underlying state of crisis and near failure. This may turn out to have been a high-risk strategy.

Indeed, the lack of any visible improvements has undermined the credibility of the European Union in the eyes of the citizens and heightened the distrust in both the European and national political elites to build a Europe whose fate is effectively determined by its citizens.

What we can witness today is an increasing alienation of citizens with European policies and decision-making powers, a diffuse feeling of loss of control and influence which according to Besselink could also be observed in the public debates in the weeks preceding the Dutch referendum on the Constitutional Treaty. Europe is at times not perceived to offer solutions to problems, which directly affect the citizens of the Union. What is missing is a sufficient degree of ownership of citizens of European policies and decision-making. Ownership requires identification *with*, commitment *to* and appreciation *of* policies and decisions which are eligibly formulated and implemented in the citizen’s best interest. Moreover, this requires trust in national and European institutions.

### **On the shortcomings of the current institutional structure of the European Union**

**[Ladies and gentlemen]**

Today’s institutional structure does not support the emergence of such an ownership of the citizens of the European Union.

The penetration of the national legal order through European law complements the existing national structures by a new source of political power. Democratic legitimacy and accountability face new challenges. Rather than to refer to 'government without statehood', I would argue that these challenges are at least in part created by *government above statehood*.

The question where the sources of democratic legitimation and accountability should be located in such a system is anything but straightforward. The reason for this is that by its very nature as a new legal order the European Communities cannot easily be placed on a scale ranging from a federation of states to a federal state.

Europe is a half-way house. The current institutional structure of the European Union and the rules governing the exercise of power by and the relationship between these institutions clearly reflect the complexity of the European multidimensional system of governance. Indeed, the system aims at establishing an equilibrium both horizontally between the Member States and between the citizens of the Member States, as well as vertically between the national and supranational level.

The position of the Council, the European Parliament and the European Commission in the institutional framework reflect the vertical and horizontal division of legitimation and accountability. On the one hand, competencies in a considerable number of policy areas are exercised directly on the supranational level. Channels of democratic legitimation and accountability on the other hand remain largely intergovernmental in the sense they are facilitated through the Member States even in areas where the Member States have vested exclusive competencies in the European Union.

The Council, consisting of the representatives of the governments of the Member States, takes central stage in the decision-making process on the European level. In Community context, in areas where the co-decision procedure applies it shares his role with the European Parliament. However, in a few remaining areas in the context of the EC Treaty and even more so in the context of the so-called second and third pillar of the EU, relating to the Common Foreign and Security Policy and Police and

Judicial Co-operation in Criminal Matters, the Council dominating the decision-making process do to the weak position of the European Parliament.

The role which the Council plays in legitimising decisions on the European level and the extent to which it is actually accountable for its activities is rather dubious and arguably contributes to the lack of ownership of citizens of European policies and decisions-making. Both legitimacy and accountability is channelled through the government of the Member States and ultimately rests on the shoulders of the national parliaments.

The extent to which national parliaments are actively involved in legitimising the position of the national government in the Council depends entirely on the national constitutional situation and the parliamentary procedures applicable. Indeed, government may have a general mandate to act whereby it is required to defend the position it has taken in the Council *ex post*. A less common approach, e.g. to be found in Denmark, requires government to obtain a parliamentary mandate for negotiations *ex ante*. The different constitutional arrangements in the Member States in this regard arguably result in a varying degree of legitimation.

The power of national parliament ends so-to-say at the national borders. Government ministers can hardly be made responsible for Council decisions, which they have not supported. A collective responsibility for all decisions taken in the Council similar to that applicable to the Commission is neither accepted practice, nor would it reflect the legal position of the Council in the current institutional framework.

This may not be a problem to the extent that decisions in the Council are taken by unanimity as no decision can be taken without the consent of a Member State. However, in the majority of cases in the Community context decisions in the Council are taken based on a complex system of allocation of voting rights to Member States, referred to as qualified-majority voting. The allocation of these voting rights is based on a system which attempts to combine proportionate representation of Member States with proportionate representation of the population of the Member States.



A cross-country comparison reveals that these voting rights do not accurately reflect the Member States share in the overall population of the EU. This is meant to be remedied by the right of a Member State to request verification that the qualified majority vote taken in favour of a European measure represents at least 62 % of the total population of the Union. But the application of this “demographic safety net” is currently optional !

Yet, even it is argued that in the end the qualified majority requirement ensures overall the democratic legitimacy of all decisions taken, this says little about the actual democratic back-coupling in the individual Member State. It results from the very nature of the supranational legal order that a Member State is fully bound by a decision taken in the Council against the votes of that Member State. But in such instances the role of the national parliament in legitimising decision-making *ex post* is diminished.

Adding to this is the lack in many policy areas of a clear demarcation of competences between the national and supranational level. This makes it difficult not only for national parliaments but also for the citizens to assign failures.

By channelling legitimation through the Member States, the present system neither advances the identification of citizens with European decisions nor does it promote the solidarity among the citizens of the European Union. The system allows Member States to distance themselves vis-à-vis their own citizens from decisions taken on the European level. At times this can be a rather convenient, as Europe has to take the beating for the implementation of painful but necessary reforms which national politicians like to evade.

Against the present background Ungerer is right in observing that “[T]he democratic deficit is essentially the incapacity of national parliaments to control their governments in EC matters.”

**[Ladies and gentlemen]**

The European Parliament is widely perceived as the Union's democratic figurehead and proposals for a more democratic Europe regularly include calls to increase the position of the European Parliament vis-à-vis the Council and Commission. Yet, this by itself cannot sufficiently ensure ownership of European citizens over decisions taken on the supranational level. As a matter of fact, the credentials of the EP as *the* democratic institution are questionable.

This has much to do with the composition of the European Parliament which does not amount to a proportionate representation of the citizens of the European Union. As it stands, primary Community law assigns seats to each Member State individually. A quick comparison of size of population per Member State and actual number of seats reveals that the system is biased in favour of the citizens of smaller Member States. The term smaller Member States is relative. Take the Netherlands and Luxemburg as an example: if the approximately half a million nationals of Luxemburg are represented by 6 MEP's, by *how many* MEP's should the Dutch citizens of which there are about 16.5 Million be represented ? If the answer "27" sounds wrong to you, you have got a point! This is the current number of seats allocated to the Netherlands in the European Union of 27 Member States.

This system is further distorted by the fact that seats are not allocated on the basis of the actual number of EU citizens residing in a Member State but rather on the basis of nationality. Yet, according to primary Community law EU residence have the right to vote and to stand as a candidate in elections to the European Parliament under the same conditions as nationals of that Member State. The requirement stated in Article 190(2) EC that the number of representatives elected must ensure appropriate representation of the people of the states is not met.

Two motives can explain this inequality. Firstly, a true proportionate representation while at the same time not excluding the smallest Member States from receiving seats, would – in terms of sheer size – result in a sort of Chinese People's Congress. The only solution to this problem was thought to be limiting the maximum number of MEPs. Furthermore, the current arrangements may also reflect the desire to not only aim for the equality of the European citizens, but, indirectly also for the equality of Member States.

Further enlargement of the European Union based on these arrangements will have two consequences: Firstly, the disproportional representation is poised to increase due to the limitation of the number of seats in the European Parliament. Secondly, enlargement results in an increase in the number of MEP's to population ratio. Europe's political elite will thus be further distanced from the electorate.

The role of the European Parliament as the representative of the will of the citizens of the European Union is further weakened by the absence of European wide political parties. A vital channel for public opinion to enter the decision-making process is missing. Currently national parties prevail which nominate candidates for the elections to the European Parliament. The lack of a uniform electoral system, the allocation of seats to Member States rather than European constituencies and the reliance on national political parties facilitate a system whereby MEP's are elected on the basis of issues which are of a domestic rather than European nature.

Even if the issue of proportionate representation could be solved [and I shall come back to that point in due course] there remains the issue of the current position of the European Parliament in the decision-making process. Since its *metamorphose* from the general assembly, as it was referred to in the early days of European integration, to the European Parliament and the introduction of direct elections in 1979, the role of the European Parliament in the institutional triangle has increased substantially both in the decision-making procedure and in contributing to an inter-institutional system of checks and balances. Yet, considering its powers it still cannot easily be compared to a national parliament. This is first and foremost highlighted by the near absence of any formal right to propose Community legislation, a role that is assigned to the Commission.

Moreover, in a number of important areas decisions can still be taken without the consent of the European Parliament. In particular the rather mediocre role that the European Parliament plays in the third pillar of the European Union on Police and Judicial Cooperation in Criminal Matters is less than impressive. Despite the growing importance of this area and impact on the life of citizens, the influence of the European Parliament in the decision-making process is limited to being consulted and

to being informed by the Council and the Commission on discussions that have taken place.

**[Ladies and Gentlemen]**

The Commission plays a crucial role in the policy formation on the European level, foremost through its almost exclusive right of initiative for Community legislation. Moreover, the Commission exercises its own partly original and partly delegated decision-making powers.

In terms of democratic legitimation the position of the Commission may have been the most vulnerable with regard to potential criticism, as it is neither directly elected nor composed of national government representatives. Despite the fact that position of the Commission has been strengthened over time with the European Parliament currently fulfilling a key function in this regard, the Commission is arguably the most remote from the citizens

It is rather questionable whether it is actually perceived by the citizens as the custodian of the Community interest and thus, ultimately of *their* interests. One important reason for this is to be found in the way in which the Commission is at times pictured as a quasi-representation of the national interests of the Member States. This habit is widespread among politicians and journalists particular in smaller Member States, where the Commission is portrayed as an indispensable counterweight to a Council which is allegeable dominated by the large Member States.

The haggling about *portfolios* that can be witnessed with each new Commission that comes into office, as well as the long lasting heated debate about the abolishment of the principle of one Commissioner per Member State must leave citizens with the impression that the Commissioners are really just another permanent representation of the Member States in Brussels. The true reason for this power of attraction of the Commission may actually be its central role as policy-maker through its right of initiative.

## **Continuation through reorientation**

**[Ladies and Gentlemen]**

Continuing European integration in terms of widening and deepening in my vision should not be pursued without the broad consent of the citizens of the European Union. This not achieved by simply explain more plainly the past achievements of European integration and its advantages. Instead citizens have to be enabled to claim ownership of European policies and decision-making.

### ***Treaty establishing a Constitution for Europe***

I started this lecture with reference to the Constitutional Treaty, which is currently very much on the agenda again. It should be remembered that Treaty is the result of a deliberative process, which aimed at making the European Union among others more democratic.

So does the Constitutional Treaty deliver ? The short answer is No ! This Treaty to a large extent preserves today's patterns of democratic legitimacy and accountability as part of the existing institutional framework. It is far from constituting the knight in shining armour as which it is portrayed by some.

Indeed, the hybrid shape of the Council which tries to combine the equal; representation of citizens with the equal representation of Member States is maintained and so are the vertical and horizontal lines of democratic legitimation and accountability. If anything the role of the Member States is increased due to the future role of the European Council and the creation of the Union Minister for Foreign Affairs.

Unfortunately, the Treaty does not offer adequate remedies for the challenges facing Europe today in terms of lack of ownership of its citizens, not even to mention in an even larger European Union. While explicitly stating that the Union is founded on representative democracy, today's system of disproportionate representation is granted a quasi-constitutional status. The Constitutional Treaty refers to a

‘digressively proportional’ representation of European citizens. In plain English this means that “...*increasingly larger populations are represented by increasingly fewer additional seats.*”

Hard luck for those citizens living in the more populated Member State. In order to get more bang for our vote [to apply a rather well-known expression from the advertisement world] and given that EU nationals are in principle entitled to vote in their country of residence, we should all move to Luxemburg well ahead of the next elections to the European Parliament in 2009.

Some well-informed listeners in the audience may think that not all is lost given that the Constitutional Treaty is providing national parliaments with a direct access to the legislative process on the Union level. National parliaments would be given the task to monitor compliance with the principle of subsidiary which - put in a nutshell – restricts Union activities outside the areas of exclusive competences to instances where the objectives of the proposed action cannot be sufficiently achieved by the Member States.

However, it is questionable whether the Constitutional Treaty actually introduces a workable procedure that enhances the democratic legitimacy of the Union activities through the accountability of its legislative organs. In a rather interesting recent PhD-study on the role of national parliaments in the supranational legal order, Phillip Kiiiver raises doubts. He comes to the conclusion: “...*putting false hopes in the national parliaments would mean to accept far less than what we are entitled to in terms of representative democracy in the European Union.*”

Advocating the channelling of democratic legitimacy primarily through the national parliaments bears considerable risks. The biggest problem may lay in the high potential of this procedure to politicise and indeed *polemize* the procedure in ways, which are counterproductive for the *European* legislative process. It is far from certain that the opinion formation in the national parliaments will be based on the merits of the respective European drafts rather than domestic political considerations and the desire to play a more substantive role in European policy formation. Moreover, it is at least questionable whether national parliaments will actually restrict

themselves to the question whether the subsidiarity principle has been observed. National parliaments may eventually have to be reminded of the limits of their competence, which will cause conflicts. With the number of Member States in the EU growing, so does the potential for opposition to European legislative activities not necessarily based on its merits.

The Constitutional Treaty also introduces an element of participatory democracy. At least one million citizens who are nationals of a significant number of Member States would be allowed to take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Constitution. The requirement of a million signatures from a significant number of Member States may prove to be too high a hurdle to give this provision any real meaning. Moreover, the proposal *de jure* does not constitute more than a petition to the Commission which, as the choice of the word 'invite' suggests, is under no obligation to act. Dougan rather drastically refers to this procedure "...as a glib piece of window-dressing".

All things considered it is rather astonishing that the Constitutional Treaty is widely perceived as providing the necessary institutional reforms ensuring that European integration can continue. This is certainly not the case when it comes to enhancing the democratic legitimacy and accountability of the European Union and, more closely in enhancing the ownership of citizens.

### *Thinking outside the box*

#### **[Ladies and gentlemen]**

In my opinion the Constitutional Treaty will not free national and European policy-makers and academics from the task of debating the future shape of the European Union. Hulsman and Techau are right in observing that the heated Constitutional debate constitutes a deflection from the real political challenges which Europe faces in the future. Even if the current German Presidency in the Council succeeds in the somewhat desperate attempt to salvage the Constitutional Treaty, the challenge of

posed by the increasing alienation of European citizens from Europe and the lack of ownership in European policies and decision-making is here to stay .

In my views the Monnet-method has been too successful to be abandoned altogether not least because debating grand institutional designs for a final shape of Europe is too much of an academic exercise, as any such plans would stand little chance of success. Yet, welcoming the ambiguous nature of the European Union, as Stephen Weatherill has put it, should not rule out the further evolution of its institutional framework so to increase its democratic credentials. The institutional form of the European Union needs to follow much more its function.

The unsuccessful attempts at Maastricht, Amsterdam and Nice to introduce more democracy *within* the confinements of the present framework highlight what is really required. That is to step outside the box of current thinking. It calls for a re-evaluation of the before mentioned vertical and horizontal channels outside the confinements of the present system of legitimacy and accountability. The citizens of the European Union more than is the case in the present system become the reference point for the institutional arrangements.

With regard to the European Parliament, in my opinion the introduction of a uniform electoral system based on a European ballot is long overdue. Seats in the European Parliament should no longer be distributed to Member States and the elections to the European Parliament should no longer be held separately in each Member States based on a national electoral ballot.

The main obstacles is the lack of European political parties that could rise above the Member State's political sphere and could actually address electorates across borders based on trans-national programs.

Some would argue that these European parties have not emerged due to a lack of European awareness or rather identity on parts of the electorate. However, conversely it may also be argued that such a European identity is missing precisely because of today's system based on national parties. This amounts to a chicken-or-egg debate. What is pretty much undisputed is that the European identity is lagging behind the



increasing constitutionalization of the European Union. The way out of this dilemma is to take concrete steps towards establishing both.

Once a European ballot is established, the creation of *various* European parties could no longer be postponed. Albeit currently little known outside expert circles, the cross-country political groups in today's European Parliament could certainly function as a source of inspiration. Moreover, national parties of the Member States have already started to organise themselves in European umbrella organisations, such as for example the European Socialist Party, where the Dutch PvdA is a member, or the European Federation of Green Parties, where the Dutch Groen links party is a member of.

What could result from this is what Caramani describes as a system "...in which European politics is structured along non-territorial European-wide functional identities and interests..."

If the role of the European Parliament as the true directly democratically legitimised European institution is revalued in such a way, its position vis-à-vis the other institutions and namely the Council and the European Commission has to be reassessed as well, namely in the legislative process. Firstly, the European Parliament should finally be given a right of initiative for legislative proposals. It has been suggested that the European Parliament in the past has not really lobbied for such a right, being quite content with its rather passive role in this regard. The lack of any proposals by the European Parliament to the inclusion of such a right during the negotiations to the Constitutional Treaty seem to provide evidence for this.

If its legitimacy is enhanced the European Parliament should and would have to accept a more mature role in the decision-making process on the European level. It should also be anticipated provide the European Parliament with a role in formulating the general political guidelines, a task which is presently exclusively assigned to the European Council. This would require an even more active role European Parliament as it would be much more visible in the policy-making process and could be more easily judged on its own initiatives.

It should no longer be possible to pass legally binding acts without the consent of the European Parliament in any policy areas including at least today's third pillar. Indeed, this is one of the view areas where the Constitutional Treaty would actually substantially enhance the role of the European Parliament in the decision-making procedure, as the third pillar is abolished and fused with today's provisions on visas, asylum and immigration into a single Area of Freedom, Security and Justice and would to a large extent become subject to the ordinary legislative procedure established by the Constitutional Treaty.

**[Ladies and gentlemen]**

The revaluation of the position of the European Parliament in the institutional framework would not automatically result in an institutional structure, which represents a decision against a confederate European model and in favour of a federal state.

This issue relating to the final shape of European integration is not decided by the composition of the European Parliament or its role in the decision-making procedure, but rather by the extent to which the Member States transfer competencies to the European Union and thereafter by the extent to which decisions require the consent of the Council. In this respect, today's fragile balance of power between the national and the supranational level could thus be upheld. In any event, for the time being, considering the important role which national parliaments play in the implementation of secondary Community law, the role of the Council remains an important lifeline. This rules out more radical ideas, such as taking the Council completely out of the equation.

However, in the long run, considering the further enlargements, more far reaching changes of the present system would have to be considered. One proposal would be to differentiate between legislative proposals, which require the consent of the Council and proposals, on which the ultimate decision rests with the European Parliament. The systematic of exclusive and shared competencies which is currently applied in defining the vertical distribution of power between the national and supranational level of the European Union could form the basis of a redefinition of the horizontal

distribution of power between the Council and the European Parliament. Where considered appropriate this could be based on a new categorization and maybe even redistribution of competencies.

Both the extent to which the Council's consent is required for legislative proposals to pass, as well as the internal majority requirements can act as an adjusting screw in deciding on the balance of power between the national and supranational European level.. By the introduction of a *passerelle* clause it should be made easier to lower an remaining unanimity requirements in the Council to qualified majority voting. The arrangements foreseen in the Constitutional Treaty in this regard are worth preserving.

The substantial reinforcement of the position of the European Parliament would also have consequences for the European Commission. Yet, it would be premature to consider the Commission redundant in such revised institutional system. While it would lose its exclusive right of initiative and thus its exclusive position as a policy maker, this could also strengthen the position of the Commission. Firstly, with the Member State's focus on the Commission as the main policy-maker being removed, the way for a new consensus on the composition of the Commission based on actual operational requirements would be open. Secondly, suggestions such as those by Temple Lang to separate the policy-proposing from the decision-making powers of the Commission and to focus on the latter would be worth studying. This could also include proposals to shift executive tasks from the Council to the Commission could be examined.

The legitimacy of the European Commission could be further strengthened by extending the participation of the European Parliament in the election of the Commission President and the Commissioner's. It would be desirable to provide the European Parliament with a right to nominate candidates and to reject individual Commissioners-designate. Moreover, in particular in the light of proposals to transfer more executive tasks onto the Commission, its accountability needs to be reinforced.

**[Ladies and gentlemen]**

This emphasise on institutional arrangements is certainly not uncontested. Indeed, recently this rather more conventional approach to increasing democracy in the European Union has been challenged. It has been argued that the democratisation of Europe calls for the emergence of a European *demos* first, that is a common populace rather than the populace of the individual Member States. The concern that is raised in this context is that the introduction of more democratic decision-making without a European demos would deepen the crisis as “...*majority tyranny of one or more demoi over others...*” could emerge. The key to establishing such a European demos is believed to be the creation of substantive citizen’s rights and their effective protection rather than more direct channels of democratic participation of the citizens.

It is true that such a European populace and a European public opinion is absent and that this can to some extent explain the lack of ownership of European citizens and the indifference towards Europe. I would also agree with those that argue that the rather clumsy symbolism of the type found in the name and some of the contents of the Constitutional Treaty will do little in generating such a European identity. Indeed, creating and upholding substantive rights may be a more successful path.

However, the creation of such rights can hardly take place in a vacuum. The question that arises is: *Who* decides *what* these rights should be ? Is this merely a question of taking stock of the constitutional traditions, which all Member States have in common thereby opting for the lowest common denominator? Or is it the European Court of Justice in interpreting the current competencies of the Europe Community and Union? Should this be left to the governments of the Member States bargaining at the next Intergovernmental Conference or to the European Commission, who claims to follow a bottom-up approach by consulting non-governmental organisations whose democratic credentials are often weak and who certainly cannot be equated with the European citizens?

It has also been argued that the current structure of the European Union is a mere mirror image of the Member States, where democratic legitimacy and accountability no longer always follow the classic path of parliamentary and ministerial responsibility. The increasing delegation of government tasks to quasi non-governmental organisations in the name of efficiency serves regularly as an example.

Those complaining about a democratic deficit in Europe are believed to measure with different standards and to live in an ideal world. According to this opinion, what matters more than democratic procedures, is that policies are pursued which reflects the public interest. Thus, output rather than input legitimacy. For Weiler this philosophy promoted throughout many Commission documents amounts to “Bread and Circus”.

It might be the case that in the end citizens are more interested in outcome in terms of social welfare, such as high employment, economic growth and public health, rather than in the way in which these outcomes come about. And it can also be little doubt that in some of these policy areas the European Union scores comparably low.

In a recent survey on behalf of the European Commission, the fight against unemployment, the protection of social rights and ensuring economic growth were given the lowest scores in terms of performance of the European Union. On a Dutch scale from 1-10, all three scored below 5 and thus, as we say around here: *ruim onvoldoende!*

However, if democratic institutions are on the decline at the national level, does that not actually make the establishment of such structures on the European level even more important given the reliance of today’s system on the Member States ? And moreover again, who decides what these public interests are and who decides on what policies are given priority when it comes to allocating scarce public funds?

### **[Ladies and Gentlemen]**

What becomes clear is that a process is required by which the citizen’s preferences can be identified. This comes about through democratic decision-making processes, facilitated first and foremost by an institutional framework, which provides the citizens of the European Union with a higher degree of ownership over the decisions taking on the European level on their behalf.

In a recent survey on the future of Europe, participants were asked about the best way for citizens to ensure that their voice is heard in Europe. 56 % responded with ‘*voting in elections*’. This was the winning score. It seems like that not all is lost when it

comes to the basic understanding of the citizens of what democratic participation is all about !

### ***Concluding remarks***

#### **[Ladies and gentlemen]**

The title of my lecture is “Continuation or reorientation – What Future for European integration?” I have offered you a glimpse of my answer to this question which in a nutshell amount to *continuation through reorientation!*

Admittedly, I have not offered you a blueprint for the future, and as regards the brief proposals I have made, the devil is very much in the detail. Moreover, the institutional framework of the European Union is only one – albeit in my vision an important – variable.

But Europe cannot and should not continue on the chosen path of widening and deepening if the current distrust in national and European institution and the lack of commitment to and appreciation of the citizens continues. Citizens have to be enabled to claim ownership of European policies and decision-making processes. The institutional framework of the European Union can make an important contribution in this regard. By putting our hopes on a Constitutional Treaty whose faith is undecided may only result in a further distancing of Europe from its citizens. Member States should stop to repeat with the persistence of a prayers wheel that Europe needs to become more democratic and should finally start to act on behalf of Europe and its citizens!

#### **Words of Thanks**

[...]

**Ik heb gezegd !**