The Treaty of Lisbon
or
intergovernmental temptation?

'The "Community method" is allegedly being threatened by the encroachment of the "intergovernmental method" … In my opinion, that is a false argument.'

Address given by the President of the European Council, Herman Van Rompuy, at a conference organised by *Notre Europe*

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The Treaty of Lisbon or intergovernmental temptation?*

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This question goes to the very heart of the European project: it is fundamental for the future of the European Union and its role in the world.

The Treaty of Lisbon emerged from the ashes of the European Constitution. Driven forward by Angela Merkel, as President of the European Council, Nicolas Sarkozy and José Manuel Barroso, the main advances made in the Constitution were preserved at the expense of a few concessions and symbolic sacrifices in order to make the Union more effective and more democratic.

The innovations introduced by the Treaty of Lisbon alter the division of responsibilities and powers within the European Union. On the one hand, they aim to strengthen some institutions at the expense of the previous balance. On the other hand, they aim to shake up the use of the Community method by creating a permanent Presidency of the European Council and by entrusting a dual task to the High Representative, who assumes both the Presidency of the Foreign Affairs Council and the Vice-Presidency of the Commission. From the outset, the Union has clearly suffered as a result of the gulf between the European Community and political cooperation, both in the Single European Act and in the Treaty of

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Maastricht. In narrowing the gap between these two areas – one based on the Community method and the other more intergovernmental – we have good reason to wonder what the consequences of this close cohabitation will be. Debate about these two methods and how they interact is not only legitimate but also unavoidable, all the more so as the current crisis requires commitment on the part of the political leaders of the Member States. Reopening this debate should give us a clearer understanding and, if possible, help us to enhance the Union and make it a fully-fledged global player.

The Brussels European Council laid bare the traditional divisions, heightened by the diversity of the Union of 27 Member States. Since the Hague Congress in 1948, the United Kingdom, true to its traditional policy, has led a group of countries which fully support the intergovernmental or cooperation method as opposed to the Franco-German pairing and the euro area countries, which prefer the Community or federal method[2]. These divisions, which vary according to the interests of the Member States or sector-based interests, intersect with the battle lines drawn on the issue of the priority to be given to deepening as opposed to enlargement, to political Europe as opposed to market-focused Europe. The main lesson emerging from the debates and confrontations is that, despite the decline in Community spirit, the assertion of national interests and the resistance of Prime Minister Blair and the Polish President, the troika has managed to revive the European dynamic. This success highlights the fundamental role played by both individual figures and the European Council consisting of the Heads of State or Government and the President of the European Commission. The European Council and its dynamic core have now asserted themselves as the highest political authority in the European Union.

To what extent has the Treaty of Lisbon managed to maintain the balance between the Community institutions – the European Parliament, the Commission and the Court of Justice – and the intergovernmental institutions – the European Council and the Council of the European Union – particularly as, at first sight, the big winners are the European Parliament on the one hand, and the European Council and the Council on the other? The position of the Court of Justice as the judicial power has been strengthened, whereas the Commission does not seem to have gained any visible benefit from the new division of powers. However, its right of proposal has been extended in line with the extension of codecision, and it

[2] At the Hague Congress « unionists » were opposed to « federalists ». Is Germany shifting today away from the federal method towards the unionist approach despite its federal experience?

remains the institution with the greatest capacity for analysis and action. The question is whether the European Council, which has been given more authority, will draw inspiration from the Community model of the Council, by taking decisions on a proposal or recommendation from the Commission, or whether it will adopt an approach relying more directly on its members. As regards External Affairs and relations between RELEX and the CFSP, the High Representative, Baroness Ashton, has bridged the gap between these two areas, with the common foreign and security policy (CFSP) and defence policy being 'sovereign' areas *par excellence*.

Does this ambitious reform lean towards the federal approach, and is it inspired, to some extent, albeit unintentionally, by the federative spirit, method and principles? Initial answers will be provided when we see how the Treaty of Lisbon works in practice. For now, the running-in period, which is taking place against a background of financial and economic crisis, is giving a few indications. However, the quest for unprecedented European federalism is continuing[3]. To test this assertion, we propose to assess the new division of powers, to examine the cases of External Affairs and the *task force* chaired by Herman Van Rompuy, and to try to determine the direction of the first steps being taken under the Treaty of Lisbon.

On the intergovernmental institutions
A major innovation: the President of the European Council

The European Council, consisting of the Heads of State or Government and the President of the Commission, has been given a permanent President and its own role in the Union's political system has been reinforced. According to this system's logic, the more the Union's work involves problems of increasing political importance, the greater the need for its leaders to become involved. Issues of 'high politics' involving sovereign powers, such as currency or economic or external policy, require commitment on the part of the European Council members. At the same time, globalisation, multipolarity and the rise of the emerging powers alongside the United States demand greater unity in external policy if the Union is to assert itself as a global player and legislative power. That is why a permanent President is needed.

Electing the President by a qualified majority avoids any vetoes and facilitates consensus, as in the case of Herman Van Rompuy. He is

[3] Compare Sidjanski, D., *L'Avenir fédéraliste de l'Europe*, Paris, PUF, 1992; Sidjanski, D., *The Federal Future of Europe*, University of Michigan Press, 2000; and Sidjanski, D., *L'approche fédérative de l'Union européenne ou la quête d'un fédéralisme européen inédit*, Notre Europe, 2001. For further references, see the website www.dusan-sidjanski.eu

responsible for chairing and driving forward the work of the European Council, and also for ensuring the preparation and continuity of this work in cooperation with the President of the Commission and on the basis of the work of the General Affairs Council. He endeavours to facilitate cohesion and consensus within the European Council. In addition, he represents the Union in its dealings with the outside world, at the level of the Heads of State or Government, in matters of common foreign and security policy, without prejudice to the powers of the High Representative of the Union and, I would add, 'or to those of the President of the Commission'. The Union's international representation at the highest level actually requires the presence of both Presidents, and also the High Representative, particularly as foreign policy has a strong economic dimension and, in turn, security extends far beyond the narrow concept of military security, and tends to encompass economic, social and cultural activities as well as scientific and technological activities. Although the European Council acts by consensus, confidence gained as a result of cooperating in practice should enable it to gradually extend the scope of qualified majority voting. As a result of these new powers and through the actions of its President, the European Council is already reinforcing intergovernmental power within the Union.

A dual presidency within a Community system

In the case of the dual presidency, governmental authority is exercised on the basis of two institutional pillars: on the one hand the European Council and its right hands, namely the Councils, and on the other hand the European Executive, embodied by the European Commission. With its permanent President, the European Council has assumed full responsibility for the general strategies and guidelines defined in the basic text. In the future, close collaboration between the two Presidents and the High Representative will probably be imposed by *de facto interdependence* between economic and monetary policies and external relations, including security and defence. As a result, even in these political matters *par excellence*, at some point in the future the European Council will probably become responsible for these decisions, acting on a proposal from the Commission and the General Affairs Council. That at least is my prediction, which aims to guarantee, using the Community method, optimum coherence according to the European public interest.

For its part, Foreign Affairs will require joint action by the Foreign Affairs Council, chaired by the High Representative, and the Commission. In the long term, the Community method will tend to become more widely used,

guaranteeing *efficiency* and ensuring *democratic control* by the European Parliament over the Commission and its Vice-President. At the moment, the relationship between the two Presidents seems to be moving towards a tandem vital to the smooth running of the Union, based on the division of tasks. However, the situation is not as clear with regard to the relationship between President Herman Van Rompuy and the rotating Council presidencies.

On the Council
Confusion or separation of powers?

Together with the Commission, the Council plays a key role in the decision-making process of the European Community. It forms the final stage in the *legislative process* under the codecision procedure with the European Parliament. Its dual role in the adoption of legislative acts and common policies proposed by the Commission and its governmental authority, which it often shares with the Commission, reinforce its position within the Community system. On the other hand, the proliferation of specialised Councils undermines its coherence and hinders the rotating presidency in its task of coordination. Like Janus, it has two faces, one with *legislative power* and the other with *governmental authority*.

With the extension of the sovereign areas of the European Union, the Council has become, together with the European Council, the main holder of the new powers conferred on the Union under the CFSP. In fact it lies at the very heart of the debate on the intergovernmental or Community nature of the European Union. Its inherent ambiguity is due to the fact that it not only escapes control by the European Parliament when acting as the Community legislature, which is only natural, but also when it takes governmental decisions, which is less so. Paradoxically, the Commission, which proposes, is subject to the democratic control of the European Parliament whereas the Council, which decides, escapes any parliamentary control. Is it not often said that Montesquieu has not yet made a detour via Brussels?

In the Union's *legislative process*, the Commission makes proposals and tries to maintain both the consistency and the balance of Community legislation. It has a tool for this purpose: the requirement for unanimity in the Council for any amendment to its proposal, which the Commission alone is authorised to make. As the source of European legislation, its scope of operation has expanded in line with the extension of codecision powers. This point has often been omitted in recent assessments of the division of powers. *Legislative codecision* has gradually been extended,

increasing the power of the Commission and the European Parliament, and also the functional capacity of the Council due to the extension of qualified majority voting. It is logical to wonder whether we are not heading towards a *bicameral legislative power*. This dual participation of the Member States and Union citizens is evidence of the move towards a federative system. Without creating a 'legislative Council'[4], the Treaty has kept the distinction between the two functions of the Council, with the legislative function being carried out in total transparency. However, the Council's ambivalence has been accentuated in that it now has more governmental functions in the foreign policy area. The confusion of powers remains the fundamental problem of the Council.

A leap forward: a new voting procedure

A double qualified majority is defined as at least 55% of Council members representing 65% of the Union's population. It reflects the *federative principle* of the dual representation of Member States and citizens. This procedure applies when the Council acts *on a proposal* from the Commission, which shows the trust enjoyed by the Commission. On the other hand, if the initiative stems from one or more Member States, the majority required is 72% of members representing 65% of the population. This new rule takes account of the population criterion and underlines the importance of proposals made by the Commission or High Representative[5]. In practice, the Council votes only rarely; instead it tries to reach decisions by consensus. However, qualified majority voting avoids paralysis and helps to speed up the reconciliation of positions and decision-making. It also helps to increase the system's capacity, while moving it towards a federative community.

On the Community institutions

The European Parliament: the big winner

The *European Parliament* has emerged stronger, thus giving the Union a more democratic dimension. Its legislative function under the *codecision* procedure with the Council has been extended to around 50 new areas requiring proposals to be made by the Commission. Its legislative powers are comparable to those of the Council. The same is true on budgetary matters, where it has decision-making rights equal to those of the Council.

[4] The German government made proposals based on the ideas of Karl Lamers and Wolfang Schäuble, CDU/CSU-Fraktion des Deutschen Bundestages, Bonn, 1 September 1994.
[5] At the insistence of Poland, this procedure will take effect, following a further delay, in 2014, with an additional transitional period to 31 March 2017.

Moreover, its powers of political control over the Commission and its President have been consolidated. After hearing the candidate for President of the Commission proposed by the European Council, the European Parliament elects the President by an absolute majority of its members. It also organises hearings of future Commissioners, before investing the College as a whole. Its authority has therefore been reinforced. However, the main advance is still the extent of its legislative codecision power and its influence over the Commission, of which it is also the natural ally. The best evidence of this progress towards a federative democracy is, firstly, the importance afforded by the Commission and the Council to the European Parliament and, secondly, the fact that it has become the target of interest groups and lobbyists. These are all indicators of the increased power that the European Parliament now has.

What about the Commission, the driving force of the Union?

As a unique and independent institution, the Commission enjoys the right of initiative and proposal, together with supervision and management powers. It is the only institution invested with *active powers* of initiative, which has *responsibility for identifying and guaranteeing the European public interest*. As the legislative codecision procedure has been extended the Commission has seen its own scope for proposal expanded. The Commission actually plays a pivotal role in legislative matters due to its right of proposal, the consequences of which include the extension of qualified majority voting to the Council. However, it has been reduced to a *rather marginal role* in the CFSP and in the CSDP, where the intergovernmental method and unanimity are the rule. On the other hand, in Justice and Home Affairs, the Commission has been given more direct responsibility.

As the main driving force of integration, its role is to assume governance of the Union. Quite clearly, it is the only institution consisting of full-time members with *active power,* and enjoying sufficient independence to counteract the national interests represented by the Councils and to assert the European interest. It is the main guarantor of overall cohesion within the Union. In order to maintain its role after enlargement and reinforce its *collective responsibility* and *efficiency*, the Treaty of Lisbon in particular limits the number of its members to 15 from 2014. Overall, it exercises political responsibility through its 'small' administration[6].

In its approach, which mainly involves consulting experts and the main stakeholders, the Commission looks for balanced solutions that are as

[6] The Commission's administration is small compared to national administrations, and even regional or metropolitan administrations.

objective as possible and that protect the interests of the small and medium-sized Member States, while taking account of those of the large Member States. This statement explains the attachment of the former to the independent role assumed by the Commission, as these States find it more difficult to assert their interests in intergovernmental structures that are generally dominated by the large Member States. With this in mind, the Treaty of Lisbon includes a series of articles which aim to reinforce the authority of the President and the collective responsibility of the Commission.

Furthermore, the Commission's key role is apparent in the relationship between its right of proposal and qualified majority voting. The Commission's right of proposal, taking into account the balance between the interests of countries and sectors of activity, has helped to extend qualified majority voting. The Commission now has a more direct basis of legitimacy, which results from the greater involvement of the European Parliament and European political formations in the choice of its President, through hearings and the investiture of the Commission.

The Treaty of Lisbon has consolidated and expanded the role of the President, whose dual legitimacy stems from his nomination by the European Council acting by qualified majority and his election by the European Parliament[7]. The European Council takes account of the results of the European Parliament elections and conducts 'appropriate consultations' before proposing a candidate to the European Parliament. In turn, Parliament elects the President of the Commission by a majority of its component members. On 16 September 2009 the European Parliament resulting from the European elections on 7 June 2009 elected José Manuel Barroso by a majority of 382 votes. The President decides on the internal organisation of the Commission, ensuring that it acts consistently, efficiently and as a collegiate body. He therefore has the power to appoint Vice-Presidents, other than the High Representative of the Union, who is appointed by qualified majority by the European Council *with the agreement* of the President of the Commission. In addition, the Treaty of Lisbon has consolidated his authority by giving him the power to lay down guidelines within which the Commission is to work. As regards collective responsibility, individual statements by Commissioners have on two occasions harmed the authority and credibility of the Commission.[8]

[7] The European Council of 19 June 2009 unanimously supported José Manuel Barroso for a second term.

[8] Compare with the unilateral and sometimes contradictory statements made by members of the *Conseil fédéral suisse* (Swiss Federal Council), which have harmed the government's authority. Similar situations can be observed in other Member States.

The Barroso II Commission composed of 27 members should be reduced in the future, based on a system of *equal rotation*, to a core of 15 decision-making members. Does this equal rotation of Member States in the allocation of Commissioners not risk weakening the Commission and, at the same time, the Community method? The members from Malta or Cyprus will be the decision-makers just as often as the members from Germany or France. Good sense has prevailed, as this reduction stipulated by the Treaty may be amended by the European Council acting unanimously, thus opening the way to a mini-reform, which could form a precedent for the future.

A rapidly expanding area: the CFSP and the CSDP

Responsibility for taking fundamental decisions under the CFSP and the CSDP, which involves a specific procedure, should lie, in a federative context, with the *European Council acting on a proposal from the High Representative and – as often as possible – jointly with the Commission*. The consistency and efficiency of external policy depend, to a large extent, on joint proposals being made by the High Representative and the Commission, in close cooperation with the Foreign Affairs Council chaired by the High Representative. In this way discussions would be held on a proposal based on a common vision. In addition, in this configuration, democratic control would be exercised by the European Parliament, before which the Commission is fully responsible.

The division of tasks in the Union corresponds to the need for the appropriate level of political power and democratic control: the more that problems fall within the area of high politics, the more the European Council's commitment will be needed, but I hope that this commitment will be based on the Commission's proposals, as the only institution responsible before the European Parliament. Quite clearly, without any European Council, there can be no genuine external policy; without any coherent strategy between the President of the European Council, the Commission and the authority of its President and Vice-President, there can be no Union speaking with one voice and acting in common under the scrutiny of the European Parliament. In my view, the individual initiatives and steps taken by one member, whatever its political weight, or by a group of members should be channelled through proposals made by the High Representative acting jointly with the Commission and according to the guidelines and framework decisions of the European Council. These are the unavoidable conditions for a genuinely common foreign and security policy[9].

[9] This objective is implicit in the Treaty of Lisbon.

The key role of the High Representative

In line with the Franco-German proposal, the European Minister of Foreign Affairs, who has now become the High Representative, relies on a *European diplomatic service* bringing together the Commission's Directorate-General for External Relations and the Council's Directorate-General. This set-up merges the post of former High Representative with that of Commissioner for External Relations. Moreover, it marks the emergence of a European diplomatic service responsible for implementing the Union's foreign and security policy. Consisting of one-third national diplomats together with officials from the Council and the Commission, this independent service comes under the authority of the High Representative.

The Union's main handicap remains the gap between Community affairs and common foreign, security and defence affairs. The High Representative is intended to fill this gap. In these sovereign areas, the Commission has traditionally had a more unobtrusive role. A modicum of progress has been made: the High Representative, together with the Commission, has the power to present proposals in his or her own name or on behalf of the Commission. As a result, the door has been opened to more responsibility before the European Parliament. However, the fact remains that, in these sensitive areas, unanimity is still strictly required, with the President of the European Council and the President of the Foreign Affairs Council having the task of facilitating consensus. We can therefore expect them to try to keep the deliberations in the institutional context and avoid any *bypassing* by certain Member States using outside channels. The large Member States with diplomatic and military capability tend to assume leadership in CFSP and CSDP matters. The war in Iraq has split both the large and the small and medium-sized Member States[10]. These divisions reveal the arduous task facing the High Representative.

Incidentally, there is a certain ambiguity to the dual loyalty of the High Representative, who, although Vice-President of the Commission, is not subject to collective responsibility. Clearly, in the event of a motion of censure, the High Representative will resign collectively as a member of the College, but will remain in the position of President of the Foreign Affairs Council. For the time being, Baroness Ashton has kept her office in the Commission on the 12th floor of the Berlaymont building. During her hearing, she confirmed her loyalty to Europe and the Union. However, it will still be necessary to carefully observe how she pursues her European socialisation after a brief experience as Commissioner responsible for trade

[10] Unlike the full-on opposition between France and Germany during the implosion of Yugoslavia, on this occasion the Franco-German pairing has found itself in the camp of opponents to the war on Iraq.

policy. Will the performance of full-time European duties contribute to Europeanisation and the formation of a Eurosphere[11]? Unlike the Permanent Representatives, the High Representative has a dual role as President of the Foreign Affairs Council and Vice-President of the European Commission and, in this respect, she has a dual European mandate.[12]

The increased decision-making and implementing capacity needed by the European Union should allow it to become a major player and a legislative force in a multipolar world, together with the United States, Russia and Japan as well as the emerging powers of China, India and Brazil. However, it will still need to develop a bolder strategy, particularly with regard to its old ally, the United States, but also towards Russia and Ukraine. As re-emerging powers, these countries also have in common with the European Union their cultural and geographic proximity and their increasing 'de facto solidarity'. In order to speak in unison in this changing world, the Union must rely on the impetus of the High Representative and the Commission, as well as on the support of the European Council and its President. That is why we need to gradually resort to the Community method.

The Union during the running-in period

Two issues have drawn my attention: the establishment of the European External Action Service (EEAS), and the fundamental issue of the interweaving of the responsibilities of President Van Rompuy and the High Representative within the Union system, as well as their relations with President Barroso and the European Commission. Only the operation in practice of the troika will allow us to assess its effects. However, for the time being, it is clear that their close collaboration and their mutual trust will be decisive for the future of the Union.

It should firstly be noted that the High Representative is overloaded with many tasks and that she will have to rely to a great extent on the Commission and on the EEAS[13], which comes under her authority. This is particularly the case as her very broad mandate includes conducting the CFSP, including the CSDP, and ensuring the consistency of the Union's external action. In this context, the EEAS is responsible for assisting the two Presidents, the Commission and the High Representative. Led by

[11] The expression belongs to Jacques-René Rabier, Honorary Director-General at the Commission.
[12] In our previous studies, we noted that, although being representatives of the Member States, they are also spokespersons for the Union within their governments. They therefore have a dual loyalty: national and European.
[13] Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service.

Pierre Vimont, Executive Secretary General, assisted by two Deputy Secretary Generals, Helga Schmid and Maciej Popowski, and also by David Sullivan, Chief Operating Officer, the European External Action Service works in collaboration with the diplomatic services of the Member States, and also with the General Secretariat of the Council and the Commission departments. It is responsible for ensuring the consistency of the Union's external action. This action includes a series of external aid instruments managed by the Commission in the areas of cooperation, neighbourhood and partnership, as well as nuclear safety, stability instruments and instruments for democracy and human rights. That is why the dual role of the High Representative is so important.

Another innovation concerns the 132 Commission delegations, which have become Union delegations. The Heads of Delegation receive their instructions from the High Representative and from the EEAS, as well as from the Commission in its areas of responsibility. One of the consequences of this new organisation of the European diplomatic service is that meetings of the Member States' ambassadors are now chaired by the Head of Delegation instead of the Head of Mission of the country assuming the rotating presidency of the Council. The Union is seeking at all levels to reinforce the consistency and efficiency of its external action.

As regards collaboration between the two Presidents, this is developing promisingly. A gentleman's agreement was concluded between the two Presidents, who have taken to starting their weeks by breakfasting together. Initial evidence of their collaboration is also provided by their complementary participation and intervention at G-8 and G-20 meetings[14].

The ambiguous role of the *task force*[15]

A minor obstacle threatens to disrupt this harmony between the two leaders of the Union: in order to facilitate the recovery from the financial and economic crisis, the European Council decided that it would be a good idea to create a *task force* under the presidency of Herman Van Rompuy. Looking at this in more detail, we can see that it involves informal meetings between the Finance Ministers, together with Olli Rehn, Commissioner, Jean-Claude Trichet, President of the ECB, and Jean-Claude Juncker, President of the Eurogroup. Generally speaking, a *task force* consists of either a limited number of relevant Ministers, or high-level experts. To my

[14] See, for example, the joint letter on the eve of the G-20 summit in Seoul, which was assessed by the European Council on 28-29 October 2010.
[15] The impact of the financial and economic crisis on the implementation of the new treaty is profound: change in priorities, direct intervention of the German Chancellor and French President, marginalisation of the Commission despite its substantial contribution.

knowledge, Presidents of States or official organisations do not assume the presidency of a *task force*. On the other hand, the *task force* is taking its decisions and directing its actions based on the conclusions of working groups. Is it right for a senior politician to undertake to chair such informal working groups? Should he not protect his high position and independent choice?

The question is whether the *task force* is encroaching upon the powers of the Commission and whether the intergovernmental method is not seeking to impose itself upon the Community method. Personally speaking, I would have preferred a *task force* chaired by the Commissioner for Economic and Financial Affairs, which was responsible for drawing up a comprehensive anti-crisis programme based on analyses and proposals from the Commission. It should be acknowledged, however, that President Van Rompuy, whose willingness to serve Europe is not in question, is trying to find his bearings by taking various initiatives. He needs to assert himself by showing evidence of dynamism and initiative. However, the fact remains that, to avoid creating an atmosphere of competition or giving the impression of tipping the balance towards the intergovernmental institutions at the expense of the Commission, it would be advisable for any new initiative to be launched in agreement with the Commission President.

The European Council on 28 and 29 October 2010 demonstrated the tangle of initiatives, which have overall produced some good results. The *task force's* report was adopted, which was based on the Commission's proposals in numerous respects. The 'reversed majority' is intended to ensure that sanctions are automatically applied to a certain extent, if budgetary deficits and levels of public debt are exceeded inordinately. In principle, sanctions will be applied unless the Council votes to the contrary by qualified majority. President Van Rompuy insisted on the automatic application of sanctions.

The Franco-German driving force, through the impetus of the German Chancellor, has suggested the idea of a 'minor reform' of the Treaty of Lisbon in order to give the anti-crisis fund a permanent and legal basis. The stabilisation fund planned to last for three years must now be included within the Treaty of Lisbon. The Franco-German pairing has succeeded in drawing other Member States into its plan. Aware of the need for a permanent mechanism, all have accepted, with a few grumbles, this step towards economic governance. A dual mandate has been given to the *task force* and to the Commission, which requested this on its own initiative. In actual fact, we now have two road maps, which overlap and complement each other at the same time. On the one hand we have a series of proposals from the Commission: reinforcement of financial surveillance, establishment of anti-crisis mechanisms, but also the relaunch of the

internal market and the implementation of the 2010 strategy, together with other initiatives such as the reform of the European budget, the proposal to launch EU project bonds and to increase the resources of the European Stabilization Fund. In short, these are anti-crisis measures coupled with a programme for growth. On the other hand we have a top-level approach, through the mandate given by the European Council to the *task force* of President Van Rompuy. This approach is the reverse of the Community method, as it starts by consulting the governments and their Finance Ministers. A closer look reveals that this approach is based on the work and initiatives of the Commission, represented within the *task force* by the Commissioner responsible for Economic Affairs, and also on the contribution of the President of the ECB and the President of the Eurogroup. This approach actually takes a new and complex path, watched over by the President of the European Council. Is this a transitional procedure or will it become more long-term? In the first case, it is justified, whereas, in the second case, it represents a slippery slope towards the intergovernmental method.

The European Council has called for the rapid implementation of legislative instruments. This marks a return to the Community method, which is based on Commission proposals. At the same time, based on a traditional procedure, the European Council has set deadlines so that the Council and the European Parliament reach agreement on the Commission's legislative proposals before the summer of 2011.

As for the *mini-reform* establishing a permanent crisis management *mechanism*, the European Council has called on its President to consult its members about preparing a necessary but 'limited amendment', without altering Article 125 of the Treaty on the Functioning of the European Union ('no bail-out' clause). Following approval, the mini-reform consisting of the permanent mechanism could be ratified by mid-2013 at the latest. To speed up the process of establishing this crisis mechanism, would it not be opportune to resort to 'enhanced cooperation'? At the same time, the Council notes with satisfaction that the Commission intends to undertake, in close consultation with the President of the European Council, preparatory work on the general components of the new mechanism to be established, in particular the role of the private sector, the role of the IMF and the very strict conditions imposed on actions carried out under this type of instrument. In this obsession with the crisis and sanctions, have we not forgotten incentives, coordinated development programmes and European investment in infrastructure? Sanctions only make sense if they contribute through incentives to promoting growth and employment recovery. I would highlight the following points: the capacity of the Franco-German pairing to

boost recovery, the continued activities of the *task force* and its President, and the unavoidable role of the Commission and the return to the use of deadlines[16].

In this procedural mix where the roles of the two Presidents and the intergovernmental and Community methods have become confused, it is difficult and premature to assess the contribution of each one. Although the initiatives are shared between the Commission, the *task force* and the Franco-German pairing, the results with regard to the contents of the European Council decisions are generally positive. The 'weighty' tasks and the preparation and approval of legislative rules come under the Commission's right of proposal and the codecision procedure of the Council and the European Parliament. We can understand why, faced with this complexity, the President of the European Council has stated that the Community/intergovernmental issue is a false problem resulting in a false argument. While respecting the opinion of the President of the European Council, I strongly refute this view. The long experience of the European Community, and the more recent experience of the European Union, confirm the efficiency of the Community method, which is an original characteristic of the European Union. This institutional invention differentiates the European Union from international organisations and associates it with federative-type communities, provided that the balance of powers and institutions is respected. Moreover, it ensures democratic control by the European Parliament of the Commission's activities, unlike the Council and the intergovernmental method, which escape any responsibility before the European Parliament.

Furthermore, the Community method is the only one that allows participatory democracy. When drawing up its proposals, the Commission does not limit itself to questioning governments, but also consults socioeconomic participants. The advantage of a proposal being submitted for Council approval is clear: it places, on the discussion table, a document which presents a view of the European common interest and which takes account of the balance between various national interests and between the large, medium-sized and small Member States. Conversely, intergovernmental procedures are more at risk of being dominated by the large Member States.

In terms of external relations, the example is provided by trade policy, where the interests of the Union are represented by the Commission. In various areas of external policy, this role has been devolved to the High

[16] Will the German government, followed by the French one, succeed in imposing its model and the *unionist method*? Its new intergovernmental approach is in total contradiction with its traditional European *federalist* behaviour and spirit. .

Representative, together with the two Presidents. Using the Community method, making proposals jointly with the Commission and relying on the European diplomatic service, the High Representative can increase the Union's capacity to have an international influence.

In this transitional phase, each initiative and each statement influence European commitment and the activity of various stakeholders. It is therefore essential for the *presidential tandem* to assert itself with determination as the new face and spokesperson of the Union, in concert with the High Representative. This seems to be the aim of the Treaty of Lisbon. Incidentally, each act of President Van Rompuy and President Barroso has repercussions well beyond the sphere of the European institutions and helps, both symbolically and practically, to forge the image of the European Union and confirm its influence among the global players.

Open conclusion on the future

Quite clearly, the new Treaty has made a qualitative leap forward, which is all the more significant as it has occurred at a time when Europe is struggling to pull out of the crisis. Various lessons can be learnt from this test of the Union's solidity. The crisis with the euro and the dynamic core, under pressure from public and private debts, and the risk of a domino effect highlighted by Greece's difficulties are all factors which have called into question the 'irreversible' process of integration and the positive spillover theorised by Haas. The crisis is having a dual effect: it is arousing national interests, while necessarily imposing common solutions. As in the past, the need and the desire for Europe are stronger than the trials and tribulations of globalisation and the external shocks or internal tensions.

Multiple collaboration networks and intense communication in particular by means of internet are in turn helping to maintain the rhythm and progress, albeit fluctuating but steady, towards more Union. In this complex context, the Community or federal method, combined with the new means of communication and governance, ensures the *independence* of the Member States, regions, towns and local authorities in interaction with other social players, at the same time as it ensures their participation by reinforcing the Union. In this environment, the Commission is intended to listen to the diverse voices and opinions, develop guidelines and identify common objectives. However, it will still need to perform its role to the full.

At this point in time, we can only say that the new Treaty is continuing, with a few exceptions such as the forming of a dominant core, the quest for an unprecedented European federation. However, only its operation in

practice will allow its effective contribution to the federative future of the European Union to be assessed. Quite clearly, the Treaty of Lisbon offers new instruments, which, if used to the full, are bearers of high hopes and a sign of Europe's great ambition.

Since the beginnings of the ECSC, the High Authority and then the Commission of the European Community followed by the European Union have highlighted the irreplaceable role of this independent institution, which is the European driving force of the integration process and the guarantor of the common treaties and rules. It is the key institution which, together with the European Parliament and the Court of Justice, and with the support of the European Council and the Council, has responsibility for promoting the public interest in a European context. The Treaty of Lisbon offers new means that are currently being run in and whose full use, in the spirit of the Community method, will be decisive if the Union is to progress towards an unprecedented form of European federation. The Treaty of Lisbon brings with it great hope for the future.