

***European Union: The Whole and the Parts -
Member States Challenging the Common Foreign and Security Policy***
**Comparative reflections on the relationship of the whole and the parts
in philosophy, philosophy of economics, natural science and European
integration**

**Contribution to 50 years anniversary of signing the Rome Treaty
establishing the European Economic Community**

BY

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General conclusion from comparative reflections on the relationship of the whole and the parts in philosophy, philosophy of economics and in natural science as well as in the dynamic process of creating an ever closer Union of the peoples of Europe on the basis of Treaties concluded between the EU Member States establishing the European Union: the idea of the functional dialectical approach of combining integrative, cooperative and competitive interactions between the Member States level and the Union’s collectivity of the Member States level which prevents the smaller Member States of an enlarged European Union from losing identity, from mixing in the “cytoplasm” of the larger European Union and vice versa, preventing the larger European Union from being dismantled.

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I. Introduction: the State of the European Union. The Union in search of strengthening its identity

1. The European Union’s identity issue: the Constitution deadlock and the case of Poland’s and the Czech Republic’s accepting the US offer to install an anti-missile shield

The modern concept of nation state’s sovereignty and the Member State’s political and legal obligation under the Treaty establishing the European Union

The European Union of the Twentyseven is in search of how to overcome the current deadlock of the Treaty establishing a Constitution for Europe 1 aiming at making the enlarged Union work, namely through strengthening the decisiveness of the Council. The President of the European Council, German chancellor Angela Merkel, in the course of her state visit to Poland on March 16-17, 2007, just has got some positive political signal from the President of the Republic of Poland, Lech Kaczyński, to be willing to accept the substance of the Treaty establishing a Constitution for Europe as common basis for talks on negotiating a new text of a Constitution Treaty. Before, Poland had refused the Treaty establishing a Constitution, arguing that the Treaty would diminish Poland’s status quo of weighted votes within the Council of Ministers compared to the rules on the weighting on votes of the Member States for voting within the Council of Ministers under the Nice Treaty establishing the European Union. 2

1: Treaty establishing a Constitution for Europe, Official Journal of the European Union 16 December 2004, C 310/01.

2: Protocol on the weighting of votes, attached to the Constitution Treaty, Article 2 Provisions concerning the weighting of votes in the European Council and the Council of Ministers: Poland 27 votes. see. 18 July 2003, C 169/96. And Consolidated Versions of the Treaty on European Union and of the Treaty establishing the European Community(consolidated text), Official Journal of the European Union , 29 December 2006, C 321 E/1.

Whatever will be the new text of a Treaty reforming the European Union it will have to be the legal framework for making the enlarged Union work by strengthening the European Union's democracy, transparency and decisiveness. It is since more than a decade that the Member States of the European Union are trying to reform the Founding Treaties on European Union and European Community in view of the requirements the Union urgently needs to fulfil in order primarily to ensure decisiveness of legislation procedures in a Council of twentyfive Members since May 01,2004, and of twentyseven since January 01,2007. The French and Dutch votes in 2005, refusing the ratification of the Treaty establishing a Constitution for Europe, demonstrate the crucial issue of the relationship of the European Union and the citizens of the European Union: it is the crucial issue of the Union's acceptability, the crucial issue of the Union's transparency, in the end it is the Union's identity which is at stake.

And at the same time, reforming the European Union: this is the issue of the identity of the Member States within the enlarged Union, the issue of the modern concept of nation state's sovereignty:

The political position of Poland on the weighting of Poland's votes within the Council of Ministers is the expression of a natural right of a sovereign Member Country to put in position its national interests within the Union's primary legislative body, the Council of Ministers as the collectivity's institution. It is as well the issue of the nation state's modern concept of sovereignty when the EU Member States Poland and the Czech Republic decide to accept an US offer to install a US anti-missile system to prevent the USA from being assaulted namely by Iranian missiles being launched southern flying over Europe to the USA. It is, however, the other side of the one coin: the issue of the Member State's obligation under the current Treaty establishing the European Union to consult one another within the EU's Council before taking action to join such a US initiative which directly concerns the vital security interests of the European Union as a whole.

2. European Union and the Member States: the relationship of the whole and the parts. An attempt to make a transdisciplinary , transfaculties comparative approach comparing studies in philosophy, philosophy of economics and in natural sciences, e.g. in biology on the relationship of the whole and the parts to the relationship of the European Union and the Member States under the Treaty establishing the European Union.

The Constitution issue including the special issue of the weighting of votes as well as the issue of installing the US led anti-missile system in the two EU Member States : they are all demonstrating the crucial identity issue, the identity issue of the relationship of the European Union and its Member States, the issue of the relationship of the whole and the parts. Contributions to better understanding the European Union's identity through specific studies from a legal, constitutional EU law point of view , as just undertaken by the author ³ might be complemented by a general view at the relationship of the whole and the parts.

3: Pletsch, Michael W.(2007):" *The state of the European Union – constitution, democracy, transparency, decisiveness and prospects of Common Foreign and Security Policy in post Afghanistan and Iraq Wars Era*", Heidelberg 15 March 2007, monograph.

Enhancing, in the Member States of the European Union, the better understanding of the nature of European Union being an empirical dialectical dynamic relationship of Union and Member States' levels of actors in the process of interconnected levels of cooperation and integration: the understanding of the nature of the EU is vital in present times of challenging namely the Common Foreign and Security policy of the European Union. A Common Security Policy which should be designed and implemented through the EU speaking with one voice is overdue, actually, since EU Member States "forgot" to consult one another within in the Council before they undertook joining the US led coalitions waging the wars in Afghanistan and on Iraq in 2001 and 2003. The planned installation of an US anti-missile system in the Republic of Poland and in the Czech Republic has caused the German Presidency in the Council to recall the urgent need of speaking with one voice in those vital matters of the European Union's Common Security Policy as substantial element of the Common Foreign Policy. The issue of the relationship of the European Union and the Member States under the political and legal obligations according to the current Treaty establishing the European Union is reflecting the general relationship of the European Union and the Member States as the relationship of the whole and the parts.

The relationship of the whole and the parts is a focus of attention not only in the field of European integration. It is subject to scientific attention and description in philosophy, in philosophy of economics and in natural science. A thorough look at these sciences outlining their basic thoughts on the relationship of the whole and the parts will help to develop a transdisciplinary, transfaculties comparative approach comparing studies in natural sciences, e.g. in biology with a special regard to the relationship of the whole and the parts in the European Integration.

General thoughts on the whole and the parts, on the collectivity of Member States and on the single Member States to find basic principles governing specific fields of European cooperation and integration may complement the specific studies on the EU's Common Security issue.

II. The relationship of the whole and the parts:

developing a transdisciplinary, transfaculties comparative approach by comparing studies in philosophy, philosophy of economics and natural sciences e.g. in biology

1. The relationship of the whole and the parts in philosophy: Aristotle's Political Philosophy and Hegel's lectures on the History of Philosophy

Developing a transdisciplinary comparative approach to find basic principles of structure and functional role characterizing the relationship of the whole and the parts in main disciplines may start with the science of philosophy. The whole-parts relationship had been discovered and described as a basically metaphysical issue: the "part and whole in Aristotle's Political Philosophy" is described by Mayhew. 4

4: Mayhew R.(1997), *Part and Whole in Aristotle's Political Philosophy*,in:

The Journal of Ethics, Volume 1, Number 4, 1997, pp. 325-340(16)Publisher: Springer

Mayhew argues that it is often held that according to Aristotle the Polis is a natural organism. One major reason for this "organic" interpretation is no doubt that Aristotle describes the relationship between the individual and the Polis as a part-whole relationship, seemingly the same relationship that holds between the parts of a natural organism and the organism itself. Moreover, according to Mayhew, some scholars (most notably Jonathan Barnes) believed this view of the Polis led Aristotle to accept an implicit totalitarianism. Mayhew argues, however, that an investigation of the various ways Aristotle describes parts and wholes reveals that for Aristotle the Polis has a unity (and thus a nature) quite different from that of a natural organism.

Hegel, in his Lectures on the History of Philosophy, is discussing the relationship of the whole and the parts. ⁵ His reflections appear to deliver a prophecy which, unconsciously, is laying the philosophical foundations of the European Integration politics of the 20th century:

Hegel reflects: the "whole is simply composed of all the parts, and these parts constitute the whole, the parts and the whole being consequently identical..... On the one hand it is as whole simply identical with its Parts, and, on the other hand, the parts are identical with the whole, since they together constitute the whole. The self-comprehension of reason is just like the comprehension by the whole of all its parts, if it is taken in its real speculative significance; and only in this sense could this relationship be dealt with here. the two sides, the whole and the parts, remain in mutual, isolated opposition; in the region of speculation the two indeed are different, but they are likewise not different. For the difference is ideal. Outside of the whole there thus undoubtedly remains another, namely itself as the manifold of its parts. The whole argument thus rests upon the fact that a foreign determination is first of all brought within the Idea, and then arguments against the Idea are brought forward, after it has been thus corrupted by the isolation of a one-sided determination unaccompanied by the other moment of the determination. The case is similar when it is said: "Objectivity and subjectivity are different, and thus their unity cannot be expressed." It is indeed maintained that the words are literally adhered to; but even as contained in these words, the determination is one-sided, and the other also pertains to it. Hence this difference is not what remains good, but what has to be abrogated. "

2. The whole and the parts in philosophy of economics: functionalist approach

Karl-Ernst Schenk outlines the interconnected structures, interactions and emergent properties as parts of a whole characterized through economic institutions and a complexity, thus describing the modern, functionalist approach to identify and describe the nature of the relationship of the whole and the parts. ⁶

⁵: Hegel, Georg Wilhelm Friedrich, Lectures on the History of Philosophy, (Part One: Greek Philosophy, Section Two, in:

<http://www.marxists.org/reference/archive/hegel/works/hp/hpscepticism.htm>

⁶: Schenk, Karl Ernst, (2003) "Economic institutions and complexity : structures, interactions and emergent properties / Karl-Ernst Schenk. -- Edward Elgar, 2003. (New horizons in institutional and evolutionary economics.)

Werner Stark describes the functional nature of the relationship of the whole and the parts, both – in the reflection of thought- existing in a opposite position, but in reality they are acting in a interconnected relationship of interdependent levels of mutually influencing contributions to a commonly shared benefit. 7

3. The whole and the parts in natural science, namely in biology: the dialectical functional approach

In natural science, namely in biology, Richard Levins and Richard Lewontin take a dialectical approach to biology. 8 They see "dialectics" more as a set of questions to ask about biological research, a weapon against dogmatism, than as a set of pre-determined answers. They focus on the (dialectical) relationship between the "whole" (or totality) and the "parts." "Part makes whole, and whole makes part" (p. 272). That is, a biological system of some kind consists of a collection of heterogeneous parts. All of these contribute to the character of the whole, as in reductionist thinking. On the other hand, the whole has an existence independent of the parts and feeds back to affect and determine the nature of the parts. This back-and-forth (dialectic) of causation implies a dynamic process. For example, Darwinian evolution points to the competition of a variety of species, each with heterogeneous members, within a given environment. This leads to changing species and even to new species arising. A dialectical biologist would not reject this picture as much as look for ways in which the competing creatures lead to changes in the environment, as when the action of microbes encourages the erosion of rocks. Further, each species is part of the "environment" of all of the others.

The focal issue of Lewin's and Lewontin's dialectical approach to biology is the "openness" of the biological system of the whole and the parts, a system which is not a set of pre-determined answers. The back-and-forth (dialectic)of causation implies a dynamic process.

4. The cell : the whole and the parts. Demonstrating the dialectical functional approach in biology's cytology: Complex networks of intracellular and extracellular interactions

4.1 Introduction: the reason why looking at the system of the cell with its intracellular, extracellular highly interconnected components practicing dynamic interactions

In the system of the cell we see complex networks of intracellular and extracellular structures the individual components of which are highly interconnected and practice dynamic interactions. There appear similarities between the structure and functions of the cell's relationship of the whole and the parts and the European Union and its Member States.

I would like to deepen the a.m. reflection made by Levins and Lewontin on the dialectical

7: Stark, Werner (1943) *The ideal foundations of economic thought : three essays on the philosophy of economics* / by W.Stark– London : K. Paul, Trench, Trubner, 1943. – (International library of sociology and social reconstruction).Also published: New York Oxford University Press, 1944. See "The philosophical foundations of classical economics" (p. 1-50).

8: Levins, Richard and Lewontin, Richard ("Dialectical biology", in: *The Dialectical Biologist* (Harvard U.P. 1985).

approach in biology to the relationship between the “whole” and the “parts” by looking at the cytology (biology of the cell) intra-cellular structures and networks. My objective is to find out the nature of the relation between the cell and its intracellular compartments as well as the nature of the relationship between the forum internum and the forum externum of the cell, the extracellular interactions between intracellular compartments and extracellular units, whether the interactions are run under control or without control of the cell as a whole, risking to undermine the bio-chemical well functioning of the cell as a whole, reminding the potentials causing cancer.

The findings concerning the network-system of the cell will be compared to the findings related to the relationship of the whole and the parts in the European Union: the EU as the collectivity (the “whole”) of the Member States and the single Member States, the “parts”.

The objective of the *comparative* approach is to find out whether the findings in both areas allow a general conclusion concerning a basic principle of structural and functional relations between the whole and the parts in both areas, in the field of the cytology and in the field of European Integration, at least the functional principle of relying on reason guiding the interactions between the whole and the parts, the prerequisite of sane vitality of the cell and to the benefit for all its compartments ?

Comparing the dynamic system of the cell and its intracellular components to the dynamics of the multilevelled interactions between Union level and Member States level, is the crucial identity issue common to both, to the cell and to the European Union:

- what ensures the different components to keep their individual identity ? And
- what ensures the “whole”, the whole entity’s and the cell’s, the whole’s identity and well functioning ?

The basic philosophy, the ratio of the dynamic complex network of biological intracellular interactions, might help to understand the ratio, the nature of other highly interconnected networks like the European Union ,and vice versa.

And, actually, we will have to see whether the identity of the “whole” requires the final design of a closed system or the openness of a dynamic process of mutually influencing and strengthening levels of identity.

4.2 The intracellular structure and function of the intracellular and extracellular matrix correlation of cells

The intracellular structure of eukaryotic cells forms a highly interconnected network of specialized services concentrated in different areas extensively interconnected by multiple paths of communication that interact with one another.⁹ Eucaryotes are organisms :protists, fungi, plants and animals.cell size:generally 5 to 100 mym in linear dimension. Their orga-

9: see the eukaryotic cells: a survey of their principle organelles,in: **Alberts, Bruce et al.(1994), Molecular Biology of The Cell.3rd edition, Alberts, Bray,Lewis,Raff,Roberts,Watson.Garland Publishing ,Inc. New York&London,ISBN 0-8153-1619-4(hard cover)-ISBN 0-8153-1620-8(pbk.),pp. 18,19,22,23**

nelles are: nucleus, mitochondria, chloroplasts, endoplasmic reticulum, etc. Internal membranes surround the nucleus, the mitochondria and in plant cells the chloroplasts. They form a labyrinthine compartment called the endoplasmic reticulum where lipids and proteins of cell membranes and materials destined for export from the cell are synthesized. They form stacks of flattened sacs constituting the Golgi apparatus which is involved in the modification and transport of the molecules made in the endoplasmic reticulum. Membranes surround lysosomes which contain stores of enzymes required for intracellular digestion and so prevent them from attacking the proteins and nucleic acids elsewhere in the cell. Membranes surround peroxisomes, where dangerously reactive hydrogen peroxide is generated and degraded during the oxidation of various molecules by O_2 . Membranes also form small vesicles and, in plants, a large liquid-filled vacuole:

The cell contains 10 or more chemically distinct membrane bounded compartments. Vesicular transport mediates a continual exchange of components among them. Each compartment encloses space that is topologically equivalent to the outside of the cell. They communicate with one another by means of transport vesicles.

The cell's cytoplasm is the internal skeleton, the cytoskeleton. The cytoskeleton is composed of protein filaments; cytoplasmic streaming; endocytosis and exocytosis. **10.** All eukaryotic cells have the cytoskeleton, that gives the cell its shape, its capacity to move, and its ability to arrange its organelles and transport them from one part of the cell to another. The cytoskeleton is composed of a network of protein filaments, two of the most important of which are actin filaments and microtubules. Most of the organelles in a eukaryotic cell appear to be attached, directly or indirectly, to the cytoskeleton and, when they move, to be propelled along cytoskeleton tracks.

All these membrane-bounded structures correspond to distinct internal compartments within the cytoplasm. In a typical animal cell these compartments (or organelles) occupy nearly half the total cell volume. The remaining compartment of the cytoplasm, which includes everything other than the membrane-bounded organelles, is usually referred to as the cytosol. *The functional role of the cell's intracellular parts, the membrane-bounded structures and internal compartments within the cytoplasm is to sustain the cell's vitality through providing the cell with a surface that enables the continual ingestion of fluid and particles.*

4.3. Extracellular and intracellular interaction: Forum internum – forum externum of the cell, intracellular –extracellular mediation

All of the mentioned membrane structures lie in the interior of the cell. How, then, can they help to solve the problem to provide the cell with a surface area that is adequate to its large volume? There is a continual exchange between the internal membrane-bounded compartments and the outside of the cell, achieved by endocytosis and exocytosis. Endocytosis is the process by which cells take up macromolecules, particulate substances. The process is unique to eucaryotic cells: Material to be ingested is progressively enclosed by a small portion of the plasma membrane. In endocytosis portions of the external surface membrane invaginate and pinch off to form membrane-bounded cytoplasmic vesicles that contain both substances present in the external medium and molecules previously adsorbed on the cell surface: pinocytosis involving the ingestion of fluid, and phagocytosis involving the ingestion of large particles such as microorganisms – a special form of endocytosis. 11

10: ibid.,supra, note 9, p. 22.

11: ibid.,supra, note 9, p. 618.

Exocytosis is the reverse process: the transport from the trans Golgi network to the cell surface. Transport vesicles contain membrane proteins and lipids providing new components for the cell's plasma membrane. The soluble proteins inside the vesicles are secreted to the extracellular space. The fusion of the vesicles with the plasma membrane is called exocytosis 12. In this way cells produce and secrete most of the proteoglycans and glycoproteins of the extracellular matrix, whereby membrane-bounded vesicles inside the cell fuse with the plasma membrane surrounding compartments deep inside the cell serving to increase the effective surface area of the cell for exchanges of matter with the outside world: the extracellular matrix.

The extracellular matrix interacts with cells. Cell-surface molecules (matrix receptors) bind the matrix to the cell's cortical cytoskeleton. Besides the role as anchors for the cell, focal contacts do relay signals from the extracellular matrix to the cytoskeleton. Integrins, extracellular matrix receptors on cells, transmembrane linker glycoproteins in the plasma membrane, connect intracellular actin filaments to the extracellular matrix at a focal point. The linkage is indirect and is mediated by multiple attachment proteins. 13

In the presence of this massive exchange, each intracellular compartment maintains its specialized character, its identity (structure and functional role) with the help of interacting actin filaments. Actin filaments do interact with different sets of actin-binding proteins at different locations in the cortex. The actin-binding proteins can be segregated to different parts of the cell. The various sets of actin-binding proteins are prevented from losing their structure and functional role, from mixing in the cytoplasm. This is held due to a dialectical relationship between both cooperative and competitive interactions among these proteins. The behaviour of the cell cortex depends on a balance of cooperative and competitive interactions among a set of actin-binding proteins? 14

4.4 Conclusion: the cell's cooperative and competitive relationship of the whole and parts, basic strategy guiding intracellular and extracellular interactions, functional role: achieving and sustaining vitality

In the system of the cell we see a complex network of interconnected intracellular and extracellular structures the individual components of which are highly interconnected and practice dynamic interactions. The interactions have the functional role to sustain the cell's vitality.

The intracellular structure of eukaryotic cells forms a highly interconnected network of specialized services concentrated in different areas extensively interconnected by multiple paths of communication that interact with one another. The functional role of the cell's intracellular parts, the membrane-bounded structures and internal compartments within the cytoplasm is to provide the cell with a surface that enables the continual ingestion of fluid and particles. The compartments inside the cell are serving to increase the effective surface area of the cell for exchanges of matter with the outside world: the extracellular matrix.

The extracellular matrix interacts with the cell's intracellular structure.. Cell-surface

12: *ibid.*, *supra*, note 9, p. 626.

13: *ibid.*, *supra*, note 9, pp.997- 999.

14: *ibid.*, *supra*, note 9, pp.834, 843.

molecules (matrix receptors)bind the extracellular matrix to the cell's cortical cytoskeleton. Besides the role as anchors for the cell, focal contacts do relay signals from the extracellular matrix to the cytoskeleton. Integrins, extracellular matrix receptors on cells, transmembrane linker glycoproteins in the plasma membrane, connect intracellular actin filaments to the extracellular matrix at a focal point. The linkage is indirect and is mediated by multiple attachment proteins. 15

The well-functioning of the complex network of intracellular compartments'and extracellular units' interactions depends on the existence of different intracellular and extracellular independent actors keeping their independent identity, but that are running under the control of the cell's whole unit: each intracellular compartment maintains its specialized character, its identity(structure and functional role) with the help of interacting actin-binding filaments: various sets of actin-binding proteins are prevented from losing their structure and functional role, from mixing in the cytoplasm. This is held due to a dialectical relationship between both cooperative and competitive interactions among these proteins.

The findings allow a general conclusion concerning the basic principle guiding the structural and functional relations between the whole and the parts of the cell: the dynamics of the dialectical relationship of interconnected cooperative and competitive levels of the complex network of the cell:

- the dialectical relationship between the cell and its structural components ensures the continual process of dynamic interactions . The functional role of the dynamic process of interactions is to sustain the vitality of the cell. The vitality if the cell depends on the well functioning of independent intracellular actors that keep their independent role due to the dialectical balance between cooperative and competitive interactions between the different intracellular compartments.
- The vitality of the cell depends, as well, on the dialectical correlation between forum internum and forum externum of the cell, between the intracellular compartments and extracellular units that are keeping their independent identity, but that are running in a cooperative as well competitive way to sustain the cell's vitality.

5. General Conclusion: According to the modern functionalist approach the parts do not constitute the whole as an end in itself. The whole and the parts, however, are both subject to achieve common objectives, bound by the rationalism's principle of effectiveness.

In his Political Philosophy Aristotle's reflections on "the whole and the parts": describing the polis as natural organism, a unity of individuals, and Hegel's Greek Philosophy " parts constitute the whole" : both are metaphysical reflections. According to the modern functionalist approach,however, the parts do not constitute the whole as an end in itself. The whole and the parts are both subject to achieve common objectives, bound by the rationalism's principle of effectiveness.

15:ibid., supra, note 9, 997-999.

One can learn from the behaviour of the complex network of interactions between the “whole” level and the “parts” level by comparing them to other highly interconnected networks: e.g. the nation state, international organisations and unique organisations of nation states as the case of the European Union:

Emanating from the modern post Westphalian concept of the nation state and its sovereignty, from the enlightenment’s rationalism and Rousseau’s “contrat social” the parts, the citizens constitute the state without unconditional “surrender”: the state’s legitimacy depends on the extent to which the state fulfils the conditions of the contrat social.

Reviewing basic strategies that make the dynamic complex networks of multilevelled interactions within the European Union work, what prevents the smaller Member States of an enlarged European Union from losing identity, from mixing in the larger European Union? What prevents the enlarged European Union from being dismantled ? The following section will try an answer:

III. The European Union – complex network of dynamic interactions of the whole and the parts

1. The European Union, Member States and the Treaty establishing a Constitution for Europe

Seeing and understanding the structure, the nature and the functioning of the European Union requires using the method of applying the lesson taken from the process of dynamically gradual stages in European integration history to current challenges and to the prospects of further reforming the enlarged European Union. The dynamic process of “creating an ever closer Union among the peoples of Europe” :(**Article 1 Treaty establishing the European Union**), and

Treaty establishing a Constitution for Europe, *Article 1*

Establishment of the Union

1. Reflecting the will of the citizens and States of Europe to build a common future, this Constitution establishes the European Union, on which the Member States confer competences to attain objectives they have in common. The Union shall coordinate the policies by which the Member States aim to achieve these objectives, and shall exercise in the Community way the competences they confer on it.(**Article 1 1st paragraph Treaty establishing a Constitution for Europe**)” **16**

16: ibid., supra notes 1 and 2.

The final organizational design of the European Union is kept open. Instead, it is the dynamic process character : "Reflecting the will of the citizens and States of Europe to build a common future..".

The European Union is an institution created by the will of the citizens and States of Europe, on which the Member States confer competences to attain objectives they have in common:

"The Union's aim is to promote peace, its values and the well-being of its peoples": Article 3 1st paragraph. 17

The European Union's relationship with the Member States is, according to the Constitution , the relationship of the whole and the parts: the Member States are components of the European Union, the Member States continue to exist as sovereign states under the Constitution and being subject to the Union's exercising in the Community way - the creation of directly binding Community law- the competences the Member States confer on it: Article 1 paragraph 2nd sentence of the Constitution states: " The Union shall coordinate the policies by which the Member States aim to achieve these objectives, and shall exercise in the Community way the competences they confer on it."

The continuing existence of the Member States under the Constitution is confirmed by the following Articles of the Constitution:

Article 3 3rd paragraph, stating that the European Union "shall promote economic, social and territorial cohesion, and solidarity among Member States. The Union shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced."

Article 3 5th paragraph states the principle of attributed powers:

"5. These objectives shall be pursued by appropriate means, depending on the extent to which the relevant competences are attributed to the Union in the Constitution."

The principle of attributed powers as layed down in the Constitution as well as layed down in all preceding Treaties establishing the European Union and the European Community, guarantees the basic principle in European Union law, being a constitutional essential, that the Member States' sovereign rights to be the Masters of the European Union remain untouched: The competences and powers conferred on the Union by the Member States are limited, they are conferred as far as attributed by the Constitution: the European Union has no state like competence-competence creating own competences . Enlarging the Union's competences requires the unanimous consent through all Member States in the way of concluding a Treaty which would be subject to ratification by the national electorates according to the national constitutional procedures.

On the basis of the recognition that the Member States remain the Masters of the Treaty establishing a Constitution for Europe, the basic principles of the relationship between the European Union and the Member States, the relationship of the whole and the parts, are

17: *ibid.*, *supra*, note 1.

stipulated by Article 5 of the Treaty establishing a Constitution, focussing on the Union's obligation to respect

- the national identities of the Member States inherent in their fundamental structures, political and constitutional, inclusive of regional and local selfgovernment;
- their essential State functions;
- the principle of loyal cooperation and mutual assistance and vice versa.

“

Article 5

Relations between the Union and the Member States

1. The Union shall respect the national identities of the Member States, inherent in their fundamental structures, political and constitutional, inclusive of regional and local selfgovernment.

It shall respect their essential State functions, including those for ensuring the territorial integrity of the State, and for maintaining law and order and safeguarding internal security.

2. Following the principle of loyal cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Constitution.”

The relationship between the European Union and the Member States, the relationship of the whole and the parts under the Treaty establishing a Constitution for Europe is no Innovation, it is confirming what had gradually and dynamically been evolved during the last decades of more than 50 years of European Integration: the identity of the European Union:

2. The identity issue of the European Union: key-opener to the pending issue of the Treaty establishing a Constitution for Europe and to the constitutional quality essentials 18)

The enlargement of the European Union –now the Union of the Twentyseven- had rightly once been conceived that enlargement before being implemented should be preceded by a fundamental reform of the way in which the EU institutions operate, being democratically accountable, transparent, with a view to both the efficiency and decisiveness of the Union in its various policy fields. A deepening of the European Union, not in the sense of adding new policy powers but of maintaining the Union's capacity to act effectively, both inwardly and outwardly, close to the European citizen: that had been considered to be necessary, constituting the common consent reached among the Union's Member States after the 1992 Maastricht Treaty on European Union had entered into force and when the Copenhagen summit of the Union's Heads of State and Government had given perspectives for Central and Eastern European Countries to accede to the Union.

The Member States, however, did not what they had promised: they did not deepen the European Union before enlargement, they were not ready to make the Union more efficient. The Member States had lost their basic momentum: they did not take the chance given by the Intergovernmental Conferences 1996/97 and 2000 which had been supposed to make sufficient progress to achieve reforms of the decision-making namely in the Council of the European Union.

18: Pletsch, Michael W., *ibid.*, supra, note 3. also covering the following points 3.- 19.

Nor did the 1997 Amsterdam Treaty on European Union, nor did the 2001 Nice Treaty on European Union make comprehensive contributions to the needs of the Union's democratic accountability, transparency and both decisiveness and efficiency.

The Member States even failed the entire ratification of the Treaty establishing a Constitution for Europe and thus failed to take the chance of deepening the Union first by strengthening the Union's democratic accountability and decisiveness before enlarging when the Union became the Union of the Twentyfive on January 1st 2005. Now, the Union being a Union of the Twentyseven, since January 1st, 2007, it is facing the challenge to rescue the essentials of the Treaty on Constitution..

And it is still not clear how and when the essentials of the Treaty on Constitution can be rescued, whether by a concise amendment to the Treaty on Constitution or by amendment to the existing Treaty on EU. Both options have a chance of being accepted by the public in the European Union if the text is concise enough, avoiding being labelled "constitution" and if consisting of constitutional quality essentials only, by drawing up:

- **the objectives of the Union (raison d'Être): anchor of stability for the peoples in the Union: security, peace and wealth in Europe**
- **safeguarding fundamental rights and the rule of law**
- **basic tasks and instruments**
- **guided by basic principles : democracy, transparency and efficiency**
- **institutions, basic tasks**
- **procedures subject to implementing European laws(regulations)**

throughout a newly run procedure of an Intergovernmental Conference. An Intergovernmental Conference will have to ensure a professional political approach accompanied by public debate close to the citizen in the Member States:

to present a new legal framework that reflects the respect for democratic accountability and efficiency of a European Union which is close to the citizens: ratification procedures will be successful if a European public will be encouraged to accompany the discussions of experts and to realize if and why the citizens of Europe can identify with the European Union.

For, the key opener to solutions of the pending constitution issue is the identity issue of the European Union: giving the citizens of Europe a clear picture of the **European Union's identity inherent in its fundamental structures, political and constitutional essentials** helping to strengthen the Union's acceptance and democratic legitimacy. The label "constitution" is no primary issue. Approval of any new text requires a picture of the Union which is clear and acceptable to millions of voters, a challenge which appears nearly impossible to respond to.

Supposed the French and Dutch vote on a new text presented to the European public and electorate, a successful, transparent and concise text does not necessarily have to show the label " Constitution". A new text is to be ratified by the entire number of the Union's Member States. Ratification by all Member States will probably be impossible if a Treaty's text presents hundreds of pages again as the current Treaties on Constitution and on European Union and European Community do.

Hopeful prospects of ratification by all national electorates may, therefore, have a new text that is giving a clear picture of the Union's identity shaping features: they are those which can easily be recognized by the European public and not by experts only: :identity shaping essentials of the Union's transparency, democracy and decisiveness.

For, the term „identity „ of the European Union is used here as a complex of special features that are marking and distinguishing the European Union as an entity from other institutions or collectivities of states and from the single Member State of the Union. Identity shaping features of the European Union may appear from a variety of different points of view: cultural ones, or political, geographic or legal ones. I am talking about the European Union's identity shaping features from a legal point of view:

the identity of the European Union is shaped by the EU's fundamental structures, political and constitutional ones, by the Union's own, specific "merits" as they are attributed by the Founding Treaties establishing the European Union and the European Community: the latter one, under the current Treaty establishing the European Community, as an organisation having a legal personality, endowed with own objectives, own institutions, own powers and an own, autonomous legal order which is independent from the national legal orders of the Member States.

These specific, identity shaping legal features of the European Community, are closely interconnected with **the concept of national identity and sovereignty** .

3. The nation -state and the European Union are shaped by basic constituent elements : Constitutional law and sovereignty of the nation- state, as well Founding Treaties on European Union and European Community having constitutional quality.

Constitutional law and sovereignty are basic features of the nation -state to legitimate the exercise of legislative power and to ensure democratic accountability needed for any exercise of legislative power also in post – Westphalian times : the European nation -states are the sovereign Contracting Parties of the Treaties establishing the European Union and the European Community.

National sovereignty is marked by a renewed emphasis on interdependence and on collective action, marking a dialectical relationship between the actors and the system , between the nation-states and the EU institutional collectivity .

Sovereignty still exists in modern times of globalization and nowadays `interdependence of states seeking to ensure their national interests within a network of a sort of co-existence between

- a national core of sovereignty and
- a commonly shared and jointly implemented sovereignty_ implemented by all the other EU Member States or by a limited number of Member States.

The objective, the functional role of the concept of sovereignty within the EU as the concept of a positively joint exercise of sovereignty is to reconcile the dialectics of different aspects of sovereignty within the multi -level governance EU structure of separate, but not separable levels of interdependencies between national level and EU level , attempting at satisfying the national sovereign's interest in

- good, namely effective governance on national level and on Union level, and in
- making democratic parliamentary control effective, accountable.

4. Democratic accountability is understood here as the control of governance by a set of procedures, the control of governance which guarantees the participation of those who are

governed by collectively binding decisions. **Democratic accountability increases legitimacy.**

Legitimacy means a generalized degree of trust of the addressees of these decisions towards the political system as it is, in legal terms, shaped by the policies to implement the Treaties establishing the European Union and the European Community as the legal incorporation of common values and common objectives, institutions and binding rules of a constitutional quality.

As made evident by the French and Dutch refusal of ratification of the Treaty establishing a Constitution for Europe, electorates in Member States of the European Union tend to doubt about the European Union's legitimacy.

Independently from the current Constitution Treaty's ratification outcome:

Legitimacy strengthening identity shaping essentials have priority, the formal aspect, the legal frame is less important.

What counts for legitimacy through acceptability of any text is the reasonable and legitimate objective to maintain and improve what has been achieved by European integration until now by strengthening:

- democracy, transparency and decisiveness of the European Union

European identity shaping needs legitimacy of EU governance through the legal and through the living constitution implemented on the basis of the current Founding Treaties on European Union, open to public debate and convincing if meeting the requirements of exactly these constitutional quality essentials..

5. The repercussions of European integration on national policymaking and the repercussions of national policymaking on European integration require clear and explicit constitutional law. National constitutional law clauses do exist in all national Constitutions of the EU Member States, clauses that lay the constitutional basics for a transfer of national core competences to the European level. The objective of this transfer of national, mainly legislative powers is a joint exercise of powers creating an autonomous legal order directly affecting the powers of the national legislature, the Parliament.

6. The Treaty establishing the European Union (consolidated version after the Nice Treaty on European Union) concluded as a treaty under international law, is the European legal framework for further stages in the “ process of creating an ever closer Union among the peoples of Europe”.

The exact legal pattern and static nature of the future European Union (the “finalité”) is kept open. The current concept of the European Union under the Treaty establishing the European Union is the dynamic process character of implementing common Treaty objectives by the Member States'collectivity of jointly exercising common powers.

7. Under the legal and the living constitution of the European Union: the Treaties establishing the European Union and the European Community, the legal entity endowed with own institutions and own legislative powers is the European Community. The

founding Treaty establishing the European Community – TEC -, the first pillar under the common roof established by the Treaty establishing the European Union- TEU-, is the legal framework to further develop the European integration. **Integration is the mode of cooperation between the Member States to achieve common objectives through implementing explicitly and implicitly attributed powers.**

8. The **European Community-EC-** has, gradually, evolved in a dynamic process, evolved from what many believed to be a purely intergovernmental international organization governed by public international law into a quasi-federal, “sui generis “ entity with an autonomous legal order.

The legal order of the EC is a body of rules which had not been created by one single stroke on the basis of one single constituting act in the sense of a national constitution. The **legal order of the EC** has **gradually developed** from coordinating national policies to establishing common rules on the internal market and the common monetary policy and the single European currency. The EC’s legal order **plays a dynamic functional role** of promoting and safeguarding the dynamic political evolutive character of the European Community.

It is that special dynamic evolutive dimension as well as the different levels of density of the legal order of the EC which make the EC law substantially differ from the more static character of national constitutions and legal systems of the European Union’s Member States.

9. The nature of the EC is marked by the nature of the EC Treaty’s primary and secondary law. The **founding Treaty on EC**, the primary EC law, **has constitutional quality**. The Treaty’s constitutional essentials as constitutional principles in EC law have been crafted out as case law by the European Court of Justice.

The case law crafted constitutional principles in the EC law: effectiveness of Community law, direct effect, primacy of EC law, principle of effectiveness Article 10 EC Treaty, principle of subsidiarity, principle of attributed powers (the EC’s powers are attributed by the Treaty, the EC has no state-like „competence-competence“).

10. EC jurisdiction is further emanating from a joint national sovereignty consent to the use, within the Council, of implied Treaty powers, Article 308 EC Treaty(exArticle 235), which is limited to creating new competences filling Treaty gaps in order to implement one of the Treaty objectives but without creating new Treaty objectives.

The growth of EC powers is based on the consensus among the Member States to do a broad reading of treaty-based delegations of powers (art. 133, art.94 harmonization of national laws directly impeding the establishing and functioning of the common market), find implied delegations in the text of the treaty (e.g.the ERTA case)and to use article 308 as an elastic implied powers clause

Individual member state discretion in the Council to expand or limit the scope of EC powers was officially narrowed with the reform of the Treaty of Rome by the Single European Act in 1986 and the change of the Council Rules of Procedure(*m a j o r i t y v o t i n g*).

11. Based on the dynamic and evolutive EC law **the EC** developed in a stepwise **dynamic, evolutive manner** and thus **shaping the exercise of national sovereignty** :

The nations of Europe remain and wish to preserve their independence. The old exclusiveness, however, of the Nation State and of its old concept of external as well as internal sovereign-

ty is weakened, as a sense of a common destiny became aware of the realities of common problems ranging across national borders and which cannot find solutions by national measures any more (international competitiveness, environmental protection, global warming, cross-bordering international crime, international terrorism).

The European Union's Member States develop **European integration and cooperation** in the present shape of the EC and of the Common Foreign and Security Policy and Home Affairs and Justice Cooperation under the 2nd and 3rd pillar of the Treaty on European Union. They share their national sovereignties through decisions made within the Union's institutions and according to the Treaties' provisions : in order to keep their ability to cope with the new tensions of the social and political life in Europe:

In the EU sets of interconnected social and economic problems call for management by actors operating in different policy-making contexts. Treating sovereign Member States as independently acting unified actors vis a vis the EC or within its institutions would not reflect the pluralism of modern states nor their way of behaving at EU/EC level.

The European Union has contributed to a re-definition of collective identity, to altering the link between sovereignty and territory and to a re-distribution of responsibility for public policy across different levels of government, thus shaping a dynamic multi-level common identity and sovereignty sharing :

'Multi-level system' identity indicates that the EU includes its member states in an interdependent encompassing system while, as the nature of the EC law demonstrates , at the same time, national political, economic or legal systems continue to exist.

12. The dialectic interdependence between national Member State level and the level of jointly exercised sovereignty: the core identity shaping feature of the EC

The EC Treaty's constitutional principle of **EC effectiveness and national sovereignty** are marking a **dialectic interdependence between the Member State and the level of a joint sovereignty share pattern** of the Community. Diversity and unity are indicators of the dialectic interdependence between national Member State level and the level of jointly exercised sovereignty: **the core identity shaping feature of the EC.**

Sovereignty and the status of being EC Member State means basically that the equal participation of all members in the decision-making is an essential principle of the European Community.

The principle of sovereignty of the Member State basically precludes any institutional development which would recognise the preeminence of some members . This principle, however , does not exclude solutions (weighting of votes, extension of majority voting in the EU's Council) elaborated in view of the enlargement of the EU. .Reforms are meant to ensure the effectiveness of the *acquis communautaire* and the decisiveness of the decision-making procedures of the Council and of the Commission .

Maintaining the decisiveness of the EC institutional structures and maintaining the effectiveness of the EC within the enlarged Union of the Twentyseven is of vital interest just for the sake of the modern understanding of national sovereignty to find solutions to political

challenges: they can be met by common action only, namely in the field of the EC's external role interconnected with the Union's Common Foreign and Security Policy.

13. Maintaining the decisiveness and efficiency of decision-making of the EU institutions in the enlarged Union requires alternative, flexible forms of cooperation *between the Union's Member States within the Union's Treaty institutional system without undermining the cohesion of the Union.*

As opting for divergent objectives increases the risk of the gradual disintegration of the Union as a whole, variable geometry should preferably and primarily be avoided. Multiple-speed integration allowing the same common objective for all Member States, but the speed at which the common objective is achieved individually by each Member State varies and covers the two **new forms of closer cooperation and enhanced cooperation** also:

- differentiated integration must be compatible with the objectives of the Treaty on European Union;
- each Member State must be free to participate if it can and wants to meet the requirements for the fast track;
- differentiated integration must not undermine the Community legal order or, in principle, impair the cohesion of the internal market;
- Member States which elect to opt out must not be allowed to oppose the formation of a leading group which does meet the above-mentioned criteria.

Differentiated integration and cooperation in an enlarged European Union is not a minor issue of institutional design for the EU but has to do with basic questions of large-scale politics which emerge due to a large variation in territorial and functional units and a strong coupling of these units. *On an even more abstract level, it has to do with the vital need of balancing national identity and collective identity facing necessary unity as well as diversity of EU governance.*

14. Unanimity among still sovereign Member States of the European Union in matters of Foreign and Security Policy does not hamper the Union to be a decisive external actor. With special reference made to the case of Poland and the Czech Republic concerning the US offer to install a US led anti-missile shield in both EU Member States

Taking *exempli gratia* the case of Poland's and of the Czech Republic's acceptance of the US Government's offer to install an US led anti-missile shield system in Poland and in the Czech Republic. This anti-missile shield is meant to prevent the USA from being assaulted by potential Iranian missiles launched flying northern over Europe. The two EU Member Countries accepted the US offer without consulting before within the EU's Council of Foreign Ministers that matter of vital importance for the Common Foreign and Security Policy interests of the European Union.

The Member States' obligation under the Constitution Treaty to practice solidarity and consultation before taking single Member State action is no innovation, it is a clarification of the current Treaty obligations. The obligation to inform and consult one another within the Union's Council before undertaking single States' action should be incorporated in any new text in case of the Constitution Treaty's final entire failure of ratification.

The enlarged European Union is in need of being a decisive external actor to respond to modern challenges to international security and to safeguard interests common to all Member States. The Union's potential of being a decisive external actor depends on the legal basis created by the Treaty on European Union and on the political willingness of the Union's Member States to cooperate within the Union's institutions. The Nice Treaty establishing the European Union offers the legal provisions to make the Union an external actor. The political willingness of the Member States to cooperate within the Union's institutions, however, is subject to crucial tests of the Union's management of the Common Foreign and Security Policy in the realities of the Union's living constitution: **facing the crucial task of balancing national rights of nation state's sovereignty and collective interests and identity.**

Achieving the decisiveness of the enlarged European Union in the field of Common Foreign and Security Policy including Defence Policy under the legal constitution of the Treaty establishing the European Union and under the pending Treaty establishing a Constitution for Europe is **subject to provisions on unanimity voting** in the Council of Ministers and in the European Council, on the one hand, and subject to the Member States' legal obligation to develop mutual political solidarity among Member States, on the other.

The Treaty on Constitution confirms the principle established by the Treaties on EU that decisions having defence implications are kept off from majority voting. The legal situation remains unchanged: the sovereignty of the Member States is upheld by unanimous decision on matters with defence implications, which are matters of life and death and not subject to majority voting.

This may hamper decisive action of the European Union as organisation. But, on the other hand, the Treaty on Constitution does not set free the Member States from their obligation to develop “ mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States' actions.”, Article 39 1st paragraph Treaty establishing a Constitution for Europe, emanating from the constitutional principle of effectiveness, Article 10 Treaty establishing the European Community, and confirmed by Article 3 2nd subparagraph and Article 16 Nice Treaty establishing the EU: 19

“The Union shall in particular ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies.” And: Nice Treaty “*Article 16*:Member States shall inform and consult one another within the Council on any matter of foreign and security policy of general interest in order to ensure that the Union's influence is exerted as effectively as possible by means of concerted and convergent action.”

No innovation, introduced by the Treaty on Constitution – compared to the Treaties on European Union-, but a clarification is what the principle of solidarity exactly expects Member States to do before undertaking any action on the international scene: to consult one another within the Union's European Council and the Council of Ministers (Article 39 5th paragraph Treaty on Constitution).

19: *ibid.*, *supra*, notes 1 and 2.

The fact that the acting President of the European Council, the German Chancellor Angela Merkel, in her talks to Poland's President Lech Kaczynski held during her State visit to Poland on March 16-17, 2007, achieved her host's favourable announcement that the Government of Poland is willing to consult the US led anti-missile installation issue within the NATO is a result that indicates the return of Poland back to consultation procedures in line with Poland's legal obligations assumed by signing and ratifying the Treaty establishing the European Union.

The clarification meant by Article 39 5th paragraph Treaty on Constitution to strengthen the Union's decisiveness in the field of Common Foreign and Security Policy should be secured and be incorporated in any new text or in the current Treaty on European Union, if the efforts made to revive the pending Treaty establishing a Constitution for Europe turn out to fail.

As proven by the US led anti-missile shield issue, the European Union strongly needs legal backing by such precise Treaty provision on consultation within the Union's institutions before Member States undertake single action on the international scene. The incorporation in a Treaty would enhance the Member States' public awareness to obviously comply or not to comply with explicit Treaty rules. That may help to further prevent similar acts of violating the rules of solidarity as proven in the course of coalition building before starting the wars in Afghanistan and Iraq, demonstrated by the case study on the **living constitution and the EU's external role in chapter IX of the study "The State of the European Union – Constitution, democracy, transparency, decisiveness and the prospects of a Common Foreign and Security Policy in post Afghanistan and Iraq Wars Era."**

15. The decisiveness of the European Union's Common Foreign and Security Policy faces the expectation gap between the Union's legal constitution and living constitution

The clarification made by the (Constitution) Treaty's explicit formula of the obligation to consult before acting is the result of the experience the European Union has made. Member States of the Union joined the two US led coalitions waging the wars on the Taliban and Al Qaida in Afghanistan and on the Iraq.

According to the findings made in chapter IX of the a.m. study, in both cases the Member States of the European Union participated without informing and consulting one another within the Council before taking action and thus violating the binding explicit Article 16 Treaty on EU ruling to inform and consult one another on such a matter of foreign and security policy "of general interest" before undertaking action.

16. Starting and waging the wars in Afghanistan and in Iraq without consulting within the Union's Council before undertaking action severely affected the Union's interests to assert its values on the international scene:

This is the European Union's chance to contribute to influence the further policy making in international security politics especially to influence

-- the strategies on winning the peace in Afghanistan and in Iraq, and, actually, to influence

-- any further political decision-making on extending anti-terror actions to other potential war theatres, e.g. Iran.

The European Union will have that chance if the EU Member States considering to join an international coalition use the EU's institutional framework of enhanced cooperation in the field of the Common Foreign and Security Cooperation including Defence Cooperation for common actions that are not limited to military actions only: the whole range of EU's instruments available for contributions to civil reconstruction.

For, what the European Union, beyond purely military contributions and beyond technical and financial assistance to civil reconstruction, can contribute to international security is a political know-how of high political and practical value: after the experiences made in World War II, the basic and well practiced idea of cooperation : to show countries like the shattered Iraq how to overcome the disastrous situation starting from zero, after having cleared who are the internal and external actors willing to cooperate for civil reconstruction:

- by designing and constructing the cooperation of different nationalities through
- safeguarding the identities of different nationalities and
- establishing a Community, a federation by
 - pooling parts of sovereignties and
 - jointly exercising them
 - to achieve common objectives
 - through common institutions and decisions
 - according to common rules
 - agreed upon on the basis of equality and solidarity.

What the European Union can contribute- in terms of high political added value -is the experience that international security cannot be achieved a g a i n s t each other , but through cooperation only :

The European Union developed common political objectives and instruments enabling the single Member Country to safeguard and promote its national interests within a Community of Member Countries that respect national identities within a variety of political, economic, social , diplomatic and military *Policies that are implemented by interdependent and complementary cooperation of Union level and Member States' levels :* *practicing a combined system of integration and cooperation, thus balancing the needs of national sovereignty and common objectives that can better be achieved by the Community than by single nation state action, and with respect for democratic accountability.*

17. Ensuring the efficient running of the cooperative interconnection relationship of the EU and the Member States : the functional role of the European Union's concept of a positively joint multi-level exercise of sovereignty- thus marking the core essential of the collective EU identity:

The European Union is in a dilemma between EU efficiency and the constitutional law claiming democracy. The concept of a positively joint multi-level exercise of sovereignty - thus marking collective EU identity- has a **functional role to ensure the efficient running of the EU** . The concept of a positively joint multi- level exercise of sovereignty contributes to reconciling the dialectics of different aspects of sovereignty within the multi -level

governance EU structures of non separable interdependencies between national level and EU level , reconciling

- the national Sovereign's interest to ensure, on EU level, good, namely effective governance to meet the needs of the individuals through efficiently running EU institutions which may present a **dilemma between EU efficiency and gaps in democratic control on EU level** ,
- whereas the national Sovereign's interest may also seek to ensure, on national level the democratic accountability of governance in EU matters by **making democratic parliamentary control more effective on national level**.

From the post Westphalian modern concept of sovereignty and identity, asking for a full parliamentarization of the EU – making the European Parliament the primary legislator under democratic control of a European electorate in direct elections to the European Parliament and giving the European Parliament the right to initiate EU legislation, the latter of which the Treaty establishing a Constitution for Europe rightly avoids- would appear to be unfeasible, at least premature :

The reasons why a full parliamentarization of the EU would appear unfeasible, at least premature are political and structural ones: National models of democracy developed in the national context cannot be simply transferred to the European Union, at least not by pure intervention through intergovernmental consent without considering the lack of a cross-bordering European public and of a common European awareness. A political strategy of democratic intervention based on such a transfer would not necessarily lead to a more democratic EU and would not lead to an increase in its legitimacy nor to an increase in its efficiency .

The EU is aspiring to some new form of democratic system which carves up legitimacy on its own, on the basis of a Constitution for the EU. A Constitution in the way of a formal text called “constitution” would raise wrong ideas about the nature of the European Union, while the current Treaty on European Union contains a complex system of provisions on constitutional quality essentials without labelling the Treaty on European Union “Constitution”.

Democracy and identity building cannot simply be installed by political intervention through an intergovernmental act called “Constitution” for Europe:

-Democracy and identity are linked to particular social preconditions which are only partially existent in the EU and which cannot be created by political intervention .The decision of the Heads of State or Government , July 2003, to adopt the Convention's draft Treaty establishing a Constitution for Europe had to be submitted for approval by national Parliaments or national referenda : this is meant by „ political intervention „,

Democracy requires the existence of a **collective identity** which does - not yet - exist on the level of the European Union's institutions.

But for the time being **what counts is that the EU has to work on established notions of democratic legitimacy through showing the national electorates why they can identify with the EU, making the EU idea more transparent, democratic and efficient in a concise text**, recalling the common:

- basic values all EU members are committed to ,
- interest in shaping an „ ever closer Union among the peoples of Europe”
- fundamental rights protected by the Union
- objectives, competences, powers of the EU including the European Community

contained in a basic document that might be called „ Constitution of the European Union „, but should not be called “Constitution”. It is preferable to merge the current Treaty establishing the European Union, the Treaty establishing the European Community and the Treaty establishing a Constitution for Europe in a single, concise document containing the constitutional quality essentials only, mentioned above, while detailed implementing provisions should be subject to subsequent implementing agreements.

18. The national gateway to democratic European Union Governance are the national Constitutions of EU Member States

The Member States’ national constitutions do more or less explicitly contain clauses which allow the national legislature to transfer national legislative powers to the European Union . Those national constitution clauses opening a transfer of national powers have to be in accordance with basic principles of national constitutional law, namely with the principle of democracy.

Any transfer of national legislative powers to the EC level for a joint exercise has to respect basic principles of national constitutional law.,namely with the principle of democracy,

The suprastatism established in the first pillar of the Union Treaty is *provisional*. National sovereignties are delegated rather than surrendered. Such a delegation of sovereignties is acceptable, as long as the criteria of the Constitution are upheld , criteria ,as they once were set up by the 1993 verdict (*BVerfGE*, 17, 155-213) of the German Constitutional Court :

The joint use of competences transferred to the European Community (the 1st pillar of the Treaty on EU, the pillar allowing EC legislation) must be *marginal* in relation to the functioning of the Member State democracy as a whole, and the uses to which these competences are put at the European level must be *predictable*. The delegation of national sovereignty must also be *revocable*; that is, the national authorities must retain the prerogative to re-assume the powers delegated if the criteria of marginality and predictability are not met.

The German Constitutional Court deemed these three criteria to have been met, and so concluded that the ratification of the Treaty was consistent with the demands for democratic accountability laid down in the Basic Law.

Applying that basic idea to a merger Treaty containing constitutional provisions meant to improve the European Union’s identity, namely its decisiveness, making the decision-making of the EU’s Council of a Union of the Twentyseven more transparent , more democratic and more efficient:

it means that such a merger Treaty would not be a major shift of powers between national and Union level. The joint use of competences transferred to the EU/EC (the 1st pillar) would remain marginal in relation to the functioning of the Member States’ democracy as a whole, predictable and the delegation of national sovereignty remains revocable. A merger Treaty would thus comply with the national constitutions’ general demands for democratic accountability.

19. The identity and legitimacy issue: Increasing the European Union's democratic quality should accept the proposal made by the Treaty establishing a Constitution: improving the information of national Parliaments on planned European Community legislation.

Due to the Community's legal effect on the national legislature and government, the EU/EC needs legitimacy within the Member States: public debates and political control if and to what extent belonging to the Union is in the peoples' interest. The parliamentary character of the national EU governance system, in the sense of a decisive say for political representatives who are directly legitimated, does suffer. The national ministers in the Council (and de facto often bureaucrats in the working groups) are the crucial decision-makers at the EU level, not a legislature that can be held accountable in general elections. The practice of the EU/EC Council's decision-making is not transparent enough to ensure democratic accountability. National governments regularly interact with the other governments in the EC Council of Ministers, they would participate in package deals and in the relevant political give-and-take across issue areas – which is in practice outside effective control of other national actors, namely the national Parliament. The national ministers as well as their administrations will join the common practice of showering EU related informations on the Members of national Parliaments hoping for their weakening by an overload of information.

An effective democratic procedure has to be established on a level which, in the realities of the EU, guarantees the participation of those who are the addressees of EC legislation (identity building democratic participation): this is to strengthen the national level of democratic accountability procedures through improved information of national Parliaments on planned EC legislative acts before the Council adopts EC laws. National Parliaments control their own Governments' members voting in the Council. **Improved democratic „ participation „of national Parliaments is an identity shaping element enhancing public awareness of EU matters in the Member States: The direct elected Members of the national Parliament can be held responsible by their voters in EU matters. This makes a greater say for the Parliament, the still national Sovereign, in EU governance to be an imperative.**

An assessment of the effectiveness of the national Parliaments' rights of control in EU governance matters shows that the legal control powers of the national Parliament are hardly to be exercised in every day EU politics.

Attempting to find effective compensation measures in practice in order to strengthen the democratic accountability of national Governments' EU governance, as a consequence for constitutional law policy making, this is an issue of making effective a greater say of the national Parliament in influencing and controlling the Government's voting in the Council. An EU Treaty provision cannot organize an effectively running and cooperative working relationship between national parliament and government which reconciles

- the government's needs of efficient representation of national interests on the level of the EU institutions, and
- the claims of the Constitution to seek to democratic accountability of EU governance.

A merger EU Treaty, however, can provide for improved communication ties between EU Commission and Council to inform national Parliaments on planned legislative acts before the Council and the European Parliament decide.

IV. Conclusion: learning from the behaviour of the complex network of interactions between the “whole” level and the “parts” level by comparing them to other highly interconnected networks:

As a general conclusion from comparative reflections on the relationship of the whole and the parts in philosophy, philosophy of economics and in natural science as well as in the dynamic process of creating an ever closer Union of the peoples of Europe on the basis of Treaties concluded between the EU Member States establishing the European Union:

The modern functionalist approach demonstrates, namely in natural science, the rationalism of the relationship of the whole and the parts: the parts do not constitute the whole as an end in itself. The whole and the parts, both, are subject to achieve common objectives, bound by the rationalism’s principle of effectiveness. Emanating from the modern post Westphalian concept of the nation state and its sovereignty, from the enlightenment’s rationalism and Rousseau’s “contrat social” the parts, the citizens constitute the state without unconditional “surrender”: the state’s legitimacy depends on the extent to which the state fulfils the conditions of the contrat social. The rationalism’s functional approach is the basic underlying principle of the integrationist idea of uniting Europe: the states constitute the European Union to achieve common objectives, and to benefit from cooperative and competitive interactions between the parts and the whole within the institutional system and according to attributed powers, attributed by the Treaty establishing the “whole” of the states’ level and the Union level to achieve and sustain vitality of all parts: it is that ratio which, actually, is the ratio of the cell, too, as demonstrated above

One can learn from the behaviour of the complex network of interactions between the “whole” level and the “parts” level by comparing them to other highly interconnected networks:

Reviewing basic strategies that make the dynamic complex networks of multilevelled interactions within the European Union work, it is the idea of the functional dialectical approach of combining integrative, cooperative and competitive interactions between the Member States level and the Union’s collectivity of the Member States level which prevents the smaller Member States of an enlarged European Union from losing identity, from mixing in the “cytoplasm” of the larger European Union:

The European Union’s legal identity – partly shaped and partly still being an objective to fully respond to legitimacy requirements -, the relationship of the whole

and the parts is substantially shaped through the modern post Westphalian concept of sovereignty balancing the independent pursuit of national interests and their redefinition as commonly shared interests within an institutional complex network system of the dialectical dynamic cooperative and competitive relationship of the Union and the Member States, the whole and the parts. And it is exactly that functional combined approach of cooperative and competitive relationship between the Member States and the European Union which prevents the enlarged European Union from being dismantled.

The European identity - as an objective to fully respond to legitimacy requirements- is substantially shaped through transparent, democratic and efficient European governance through the dynamic dialectics of integration and cooperation within the institutions of the European Union according to the provisions of the legal “constitution” and – in the living constitution -with respect for the identity shaping

- common values and basic principles,
- respect for human dignity, fundamental rights and the rule of law,
- common objectives to be achieved
- through common policies and institutions acting
- with transparency, democracy and efficiency.

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