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### **Germany and the Convention on Europe's Constitution: On the way to federalism?**

Germany's position on the European constitutional convention has been dominated by two factors: its insistence on a clear catalogue of competencies, promoted basically by the German Länder, and Germany's purported 'federal' ambitions as regards the shape of the future political union. Both terms are misleading, however, and invite second thoughts. As a matter of fact, the German debate on the future of Europe is neither clear nor profoundly 'federal'.

Taking the catalogue of competencies first: a clear catalogue of competencies mirrors a federal governance structure in the sense that each level of governance needs to know precisely what its 'rights' (competencies) are, according to the principle of subsidiarity. So the Germans are saying that the clearer the catalogue, the better it would work in favour of a federal structure, or that the first is a necessary condition for the latter. Yet, the Germany's talk about competencies has little to do with competencies in a legal sense. There is no creeping erosion of competencies from which the German Länder could suffer, as their actual competencies mostly concern education and police affairs – in neither of which does the EU propose to take over regulatory power. The European Commission does, however, rule in the field of competition policy and countermands subsidies that it determines are inconsistent with the Single Market. Such actions, however, are perceived by the German Länder as constituting profound interference in their domestic affairs, for of course all Minister Presidents of the Länder like to subsidise their regional industries. But if the EU Commission applies common competition rules to Bavaria or Lower Saxony, this has nothing to do with taking away competencies. The German debate about a clear catalogue of competencies is, thus, more a hidden comment on the financial structure of the EU than on anything else. In no way is it a strategy to pave the way towards federalism.

As regards the political leadership of the Union, i.e. the question of a future European executive, Germany is also said to be 'federal', whether one looks at the famous speech of Joscha Fischer at Humboldt University in 2000, the Schäuble-Martens document affiliated to the CDU or the SPD party conclusions of May 2001. Indeed, Germany has traditionally defended the interests of the small states in the EU and has demonstrated some affinity for the communitarian method of the Commission and a particular fondness for a strong European Parliament.

Hence, things are more complicated than they might initially appear. 'Politisisation', 'legitimation' and 'democratisation' are words that occur frequently in the German debate over the shape of the new institutions, and a current, trans-partisan position suggests that the president of the Commission should, in the future, be elected by the EP.

The European debate would immediately shift from a national to an ideological one; European parties would align themselves along a cross-border right-wing/left-wing spectrum; the winning coalition would choose the president who would execute his powers on the basis of a clear programme; and finally, the citizen would have a full fledged right to either sanction or reconstruct the governing majority. This development might be federal at first glance, but that would be a naive assessment for it contains worrying elements that threaten the Commission. If the Commission is to be ‘politicised’, it could no longer remain the ‘neutral guardian of the Treaties’, as it now is. The most important policy areas in which the Commission now exercises power – such as competition policy – would need to be given to a neutral European agency. ‘Politisisation’, as seductive as it sounds, may, thus, lead to a weakening of the Commission in the long run. Are there second thoughts at work in Germany?

The truth is that Germany does not possess a convincing blueprint to offer the European Union for institutional reform. The German debate is, at best, confusing, alternating between ‘federal’ proposals in the first instance and detailed suggestions designed to win back national influence in the decision-making structure. It is true that Germany did not express itself unequivocally in favour of the Blair-Aznar proposals regarding the reform of the Council. And, yes, Germany is certainly seeking solutions as to how to strengthen the Council without weakening the Commission. But it is failing to present persuasive concepts to its partners on how the latter could be achieved. The idea to reduce the number of Commissioners in order to increase the efficiency of the Commission is a nice idea, but not a realistic one. Therefore, beneath the formula of ‘federalism’, the German debate moves in various directions.

The reform of the EU finances has actually assumed a more prominent role in the German debate than has institutional reform – a fact whose subtext can be read as the desire to reduce the country’s net contribution. No constitution without budgetary constitution. One can just imagine the exchange of certain package deals. Might Germany, for example, be prepared to trade off federal ambitions against a reduction in payment to French farmers by a billion euro? Trading institutional silver and convictions against CAP money and other short-term national interests would, of course, not only be a very bad idea, but it also would spoil long term European interests. But Germany’s European debate, like that in most other EU member countries, lacks a convincing long-term vision of the future of the EU!