

EUROPEAN CONSTITUTIONAL GROUP

19 April 2021

Dear Joint Chair of the Conference on the Future of Europe,

We, the members of the European Constitutional Group, are responding to the invitation in the Joint Declaration of the Presidency to join in this conference.

We welcome the Conference as an opportunity for the EU to listen to many voices, to take stock of where it now stands and to face up to the main strategic issues currently confronting it.

Our original 1993 proposal for a European Constitution set out a vision for the EU that offered a decentralised alternative to the prevailing vision of an EU proceeding on a one-way course towards “ever closer union”. Subsequently, the pursuit of state building has provoked dissension within the Union contributing to both the loss of the UK as a member state and to the illiberal backlash in Central Europe. Unfortunately, the agenda now adopted for the Conference seeks to continue the EU along a ‘functionalist path’ instead of bringing it closer to the people. We believe that ‘The Future of Europe’ Conference should make the EU more democratic and less bureaucratic.

We attach to this letter a list of agenda items and proposals which address the associative qualities needed by a democratic union that is close to the people. Some of our proposals can be implemented without changing the Treaties.

Prof. Peter Bernholz, Universitaet Basel (chairman)

Prof. Charles B. Blankart, Humboldt Universitaet Berlin

Prof. Francisco Cabrillo, Universidad Complutense Madrid

Dr. Detmar Doering, Friedrich Naumann Stiftung, Praha

Elena Leontjeva, chairwoman, Lithuanian Free Market Institute, Vilnius

Prof. Thomas Mayer, Universitaet Witten-Herdecke, and director, Flossbach von Storch Research Institute, Koeln

Prof. Angelo Petroni, Università di Roma La Sapienza

Prof. Pascal Salin, Université Paris-IX-Dauphine

Prof. Jiri Schwarz, University of Economics, Praha

Prof. Friedrich Schneider, Johannes Kepler Universitaet Linz

Prof. Roland Vaubel, Universitaet Mannheim

Frank Vibert, Senior Visiting Fellow, London School of Economics

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### Attachment: Key Agenda Items and Proposals

#### **'Trilogue' or Separation of Power?**

*The issue:* The present EU system of co-legislation between Council and EP enshrines power sharing at its heart. Power sharing is further entrenched through the use of the accelerated procedure for most legislation involving 'trilogue' between Council, EP and Commission, negotiating and bargaining together (as in the Conference itself). The need for checks and balances has been replaced by a system of mutual back-scratching, 'log-rolling' and a 'Brussels' club culture. Transparency is the casualty. Distance from the electorate is the result.

*The alternative agenda:* This involves ensuring a separation of powers between the executive and legislative branches. The 'right of initiative' would transfer to the Parliament and a qualified majority of the Council. The 40 plus EU agencies, including the Commission, would receive their mandates from the Council. Both the Council and the executive branch would be held to account by the EP. The resulting improvements in transparency about who does what, need to be matched by further changes required to reduce the distance of Brussels from electorates.

#### **Representation and the Role of national parliaments.**

*The issue:* The European Parliament (EP) remains only weakly representative. In part this reflects the continuing 'second order' nature of European elections and, in part, the excessive disproportionality in representation between massive constituencies in the large member states and tiny constituencies in the small.

*The alternative agenda:* This involves bringing national parliaments more fully into the picture. Their representatives could form a Second Chamber or have the power to amend or to block unwanted EU initiatives ('red card').

#### **The rule of law and the ECJ.**

*The issue:* Under each of the main concepts of the 'rule of law' the minimum expectation of a constitutional court is that it should act to restrain the exercise of arbitrary power by the executive and legislative branches. The ECJ

has seen its role in the different light of working with other EU institutions to extend the powers of the EU. EU law is used instrumentally to further EU integration. This has led to clashes between the ECJ and constitutional courts of member states which undermine the citizens' trust in the legal system.

*The alternative agenda:* Alternative relationships between the ECJ and the constitutional or supreme courts of member states need to be explored in order to integrate EU law with the law of the Member States and develop an EU law consistent with concepts of the rule of law rather than to attain instrumentalist aims. These include changes to admissibility procedures, and to the selection of judges in terms of judicial experience and delegation from the highest court of each member state.

### **Conferral and Limits on Central Policy Making.**

*The issue:* Under current Treaty arrangements the division of powers between the member states and the EU rests largely on the principle of the conferral of powers, with the exercise of powers further limited, outside areas of EU 'exclusive competence', by provisions on subsidiarity and proportionality. In practice, the principle of conferral is voided by the many areas of 'shared' or 'supporting powers'. At the same time, the principles of proportionality and subsidiarity are treated as pro-forma 'box ticking' exercises (as in the Joint Declaration itself).

*An alternative agenda:* Instead of being shared, competences need to be defined and limited more precisely. Subsidiarity and proportionality need to be interpreted by a special court which does not have a vested interest in centralisation.

### **The Role of Rights: Pre-emption and benchmarks.**

*The issue:* According to the Treaty on European Union, the EU's Charter of Fundamental Rights has the same legal value as the Treaties and shall not extend EU competences. In practice however, the provisions of the Charter are used to legitimise initiatives at the EU level and are deployed as though they have peremptory value (*jus cogens*) and thus sit above all other Treaty provisions.

*The alternative agenda:* The EU must rectify its failure to accede to the European Convention of Human Rights and its procedures. The Convention is sufficient to repair any non-observance of rights in the EU. It should be made

clear that while the EU's own Charter may serve a supplementary purpose in bench-marking important values in the EU, it does not extend the jurisdiction of the ECJ or any other EU institution over the laws and administrative actions of the member states, nor sit over and above provisions of the Treaties relating to the conferral of powers or to membership itself.

### **Foreign, defence and security policy**

*The issue:* Some member states wish to use the Conference for the purpose of legitimising and asserting new common EU foreign, defence and security arrangements.

*An alternative agenda:* In the light of the rise of autocracies such as China, the priority should instead be on strengthening existing alliances with like-minded democratic countries, notably the U.S. Consistent with the need to refresh existing alliances, member states need to make a larger contribution to NATO. There is also room for lowering the EU's external tariff.

### **Monetary Union**

*The issue:* The Single Currency has been the major contributor to social and economic inequalities in the EU in recent years by removing exchange rate changes from the policy arsenal of weaker economies in the Eurozone and by placing the entire burden of adjustment and catch-up on structural reform. Against this background, there is considerable support in Brussels for the idea that monetary union must be supported by fiscal union so that fiscal policy can enable structural adjustment to be supplemented by income transfers. According to this view, the European Recovery Fund is seen as a forerunner.

*An alternative agenda:* In our different view, the development of a system of mutualisation and income transfers in the EU will weaken the incentive for structural reform and add to political tensions in the EU. We would prefer to see weaker economies provided with a road map to enable them to exit from monetary union while preserving the convenience of the Euro as a common currency.

### **Banking Union**

*The issue:* There is also support in Brussels for the idea that the free flow of capital requires uniform regulations governing banks and financial markets.

*An alternative agenda:* The free flow of capital requires the dismantling of the remaining barriers to capital movements, i.e. capital union.

-----Original Message-----

From: Prof. Dr. Vaubel <vaubel@uni-mannheim.de>

Sent: 03 May 2021 18:01

To: SASSOLI David, President <President@europarl.europa.eu>

Subject: Conference on the future of Europe

Dear President Sassoli,

on behalf of the European Constitutional Group, a group of nine professors and some other experts from all over Europe, I am sending you the attached letter and proposals for consideration at the Conference on the Future of Europe. I should be grateful if you could pass our proposals on to the other Chairpersons and participants of the conference.

Yours sincerely

Roland Vaubel

Professor of Economics

Universitaet Mannheim